118-655

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1885.**

No. ~~1242.~~ 821

HARVEY MILLS, PLAINTIFF IN ERROR,

*vs.*

PETER BUTLER, RECEIVER OF THE PACIFIC NATIONAL BANK OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

**FILED JANUARY 4, 1886.**

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Massachusetts, Greeting:

[Seal of the Circuit Court, Massachusetts.]

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you between Linus M. Price, of Newark, in the State of New Jersey, a citizen of said State, receiver of the Pacific National Bank of Boston, plaintiff, and Harvey Mills, of Thomaston, in the State of Maine, and a citizen thereof, defendant, in an action of contract, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

JOHN G. STETSON,
*Clerk of the Circuit Court of the United States,*
*District of Massachusetts.*

Allowed by—
LE BARON B. COLT,
*Judge U. S. Circuit Court, First Judicial Circuit.*

2 Circuit Court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now, here, the judges of the circuit court of the United States in and for the district of Massachusetts make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John G. Stetson, clerk of said circuit court of the United States in and for the district of Massachusetts, have hereto set my hand and the seal of said court this fifth day of October, A. D. 1885.

[Seal of the Circuit Court, Massachusetts.]

JOHN G. STETSON, *Clerk.*

3 *Declaration.* (*Filed with Plaintiff's Writ.*)

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss*:

At a circuit court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable Le Baron B. Colt, circuit judge.

LINUS M. PRICE, of Newark, in the State of New Jersey, and a Citizen thereof, as he is Receiver of the Pacific National Bank of Boston, Plaintiff,

*v.*

HARVEY MILLS, of Thomaston, in [the] State of Maine, and a Citizen thereof, but now Commorant *of* Boston, in the District of Massachusetts, Defendant.

In an action of contract.

4 Plaintiff says that the Pacific National Bank of Boston heretofore, and prior to the acts herein mentioned, was duly organized and authorized to do business as a national bank or banking association under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved on the 3d day of June, A. D. 1864, and which said provisions are embraced in title sixty-two of the Revised Statutes of the United States, located and having its banking house at Boston, in — State of Massachusetts; that said banking association thereupon proceeded, and for a long time thereafter continued, to issue currency and receive deposits of money, discount negotiable paper, and generally to transact the business of a national banking association, as authorized by the aforesaid act of Congress; that in its said business as aforesaid the said banking association contracted, prior to the 22d day of May, A. D. 1882, large debts and liabilities, and that, to wit, on the 22d day of May, A. D. 1882, the Comptroller of the Currency of the United States was satisfied from a report of proceedings of the board of directors of the Pacific National Bank of Boston, previously made to said comptroller, that said banking association, the Pacific National Bank of Boston aforesaid, was insolvent and unable to pay its debts and liabilities; that the said Comptroller of the Currency, upon being satisfied of the insolvency of said banking association as aforesaid, did, to wit, on the 22d day of May, A. D. 1882, and as authorized and empowered to do by virtue of section one of an act of Congress entitled "An act authorizing the appointment of receivers of national banks and for other purposes," approved on the 30th day of June. A. D. 1876, duly appoint the said Linus M. Price receiver of all the property, books, records, and assets of the said banking association, as is provided by law. And the said Linus M. Price accepted said appointment and duly qualified as such receiver aforesaid, and exe-

cuted such bond and with such surety as required by the laws of the United States and approved by said comptroller, and which said appointment more fully appears by a copy thereof hereto annexed, marked "Schedule A," or to the original of which, ready to be produced in court, the said plaintiff craves leave to refer; that thereupon the said plaintiff, under the direction of the said comptroller, took possession of the books, records, property, and assets of every description of the Pacific National Bank of Boston aforesaid, and has ever since been, and is now, engaged in collecting and converting the assets thereof and discharging in other respects the lawful duties of his said receivership.

And the plaintiff avers that the property and assets of said banking association are insufficient to pay and satisfy its debts and liabilities contracted as aforesaid, and that, in order to provide for the paying of the same, it became and was and is now necessary to enforce the personal liabilities of the stockholders, as is provided and imposed by said act of Congress.

And the said plaintiff further avers that the said Comptroller of the Currency did ascertain and determine, upon data satisfactory to him, that the assets and credits of said association were insufficient to pay its said debts and liabilities, and that, in order to provide the money necessary to pay said debts and liabilities of said association, it was necessary to enforce the individual liability of the shareholders of said association, as provided by the aforesaid act of Congress, and especially by the twelfth section thereof (section 5151 U. S. Rev. Statutes); and that said comptroller, in pursuance of the powers for that purpose vested in him by the aforesaid act of Congress, and to that end did, to wit, on the 27th day of November, A. D. 1882, order and make an assessment upon the said shareholders of said association, including the said defendant in this action, and each and every one of them, equally and ratably, to the amount of one hundred dollars per centum ($100 per cent.) of the par value of the shares of the capital stock in the said association held or owned by them respectively, including the defendant, at the time of its insolvency, failure, or suspension, as aforesaid, which said assessment more fully appears by a copy of the order making the same hereto annexed, marked "Schedule B," or to the original thereof, ready in court to be produced and to which the said plaintiff craves leave to refer.

And the said plaintiff further avers that the said comptroller has decided that it is now necessary to institute a suit or suits against the said shareholders, including the defendant, to enforce their said personal liability, and to that end has ordered and directed the said plaintiff to institute in the proper court or courts such suit or suits as may be necessary to enforce against each and every shareholder of the said association, equally and ratably, his or her personal liability as such shareholder, in manner and to the extent provided by the twelfth section of said act (section 5151 U. S. Rev. Statutes)—that is to say, the rate of one hundred per cent., hereinbefore specified.

And the said plaintiff further avers that the said defendant saw,

at the time of said insolvency, failure, or suspension of said banking association, a shareholder of its capital stock to the amount of fifty shares, of the par value of one hundred dollars per share, and of the aggregate value at par of five thousand dollars, and held, or was entitled to hold, in his possession or control the usual stock certificates, as such shareholder in said banking association, and that, to wit, on the first day of December, A. D. 1882, the said plaintiff made demand in writing upon the said defendant as such shareholder for payment of the sum of five thousand dollars, the amount of said assessment so made as aforesaid under and by virtue of the order of the Comptroller of the Currency, hereto annexed and marked "Schedule B," as aforesaid.

And the said plaintiff avers that, by reason of the premises, the said defendant has become and now is indebted and liable to pay to the plaintiff, as such receiver, one hundred per cent. of the amount of said capital stock—that is, one hundred dollars upon each and every share so held and owned by the said defendant at the time of the declared insolvency, failure, and suspension of said banking association as aforesaid, and which said liability or indebtedness of the defendant amounts in the whole to the sum of five thousand dollars, which said sum of money so due, owing, and payable to the said plaintiff as receiver aforesaid, though often requested, the said defendant has not paid *the same*, or any part thereof, but has wholly neglected and refused, and still does neglect and refuse, so to do.

The defendant owes the plaintiff the said sum, with interest thereon, which is demanded. To the damage of said plaintiff, as he says, the sum of ten thousand dollars.

SCHEDULE A. Referred to in foregoing declaration.

WASHINGTON, *May* 22, 1882.

Whereas it appears from the report of proceedings of the board of directors of the Pacific National Bank of Boston, located in the city of Boston, county of Suffolk, and State of Massachusetts, at a meeting held on May 20, 1882, that the said bank is insolvent, and being satisfied that the said bank is insolvent and unable to pay its just and legal debts:

Now, therefore, I, John Jay Knox, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, and under the provisions of sect. 1 of an act of Congress entitled "An act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30, 1876, do hereby appoint Linus M. Price receiver of the Pacific National Bank of Boston, with all the powers, duties, and responsibilities given to or imposed upon a receiver under provisions of the Revised Statutes of the United States which authorize the appointment of a receiver.

In witness whereof I have hereunto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this twenty-second day of May, A. D. 1882.

[L. S.] (Signed) JOHN JAY KNOX,
*Comptroller of the Currency.*

SCHEDULE B. Referred to in foregoing declaration.

In the Matter of "THE PACIFIC NATIONAL BANK OF BOSTON," MASSACHUSETTS.

To all whom it may concern:

This is to certify that I have taken an accounting of the condition of the estate of the Pacific National Bank of Boston, Massachusetts, aforesaid, and of its assets and liabilities, and I do find and determine, upon data satisfactory to me, that in order to provide the money necessary to pay the debts of said association it is necessary now to enforce, to the extent hereinafter mentioned, the individual liability of the shareholders of said association provided for by the twelfth section of the act of Congress entitled "An act to provide a national currency," approved June 3, 1864, and by sect. 5151 of the Revised Statutes of the United States, approved June 22, 1874, and to that end, and in pursuance of the powers vested in me by the said acts, I have made, and hereby order and make, an assessment or requisition upon the shareholders of said association or bank, and each and every one of them, equally and ratably, to the amount of one hundred per centum of the par value of the shares of the capital stock in the said association held or owned by them, respectively, at the time of its failure or suspension, and I direct Linus M. Price, receiver, heretofore appointed, of the said association, to take the necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In witness whereof I have hereto set my hand and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this twenty-seventh day of November, A. D. 1882.

[L. S.] (Signed) JOHN JAY KNOX,
*Comptroller of the Currency.*

6 The writ in this cause is dated the fourteenth day of March, A. D. 1883, and was duly entered at the May term of this court, A. D. 1883, when and where the parties appeared by their respective attorneys.

This casue was thence continued from term to term to the May term, A. D. 1884, when, on the sixteenth day of June, the following answer was filed:

*Defendant's Answer.* (*Filed June* 16, 1884.)

And now comes the said defendant, and, for answer to the said plaintiff's writ and declaration, denies each and every allegation therein contained; and this denial is intended to apply to all the allegations regarding said plaintiff's appointment and authority as receiver as well as to all other material allegations in said writ and declaration contained.

And, in addition to such general denial, the defendant further denies that at the time of said alleged insolvency, failure, or suspension of said national banking association and of said alleged decision

and order of the Comptroller of the Currency he, the said defendant, was a shareholder in said banking association, or held, or was entitled to hold, any certificate or certificates of any shares of its capital stock.

And the defendant further denies that any such shares or certificates of stock as were issued to or held by him, if any such there were, were ever legally or properly issued, or were ever valid or existing shares or certificates of stock. And he says that such shares or certificates of stock, if any there were issued to him, or held by him, were illegally issued in violation of law, and cannot therefore form the basis of any liability to assessment or other personal liability, as claimed by said plaintiff.

And, further answering, the defendant says that the assessment upon said stock or shares set forth in the plaintiff's declaration, if any such was ever made, was an unlawful and void assessment, and that no action lies to recover the same by said plaintiff.

And, further answering, the defendant says that in the month of January, 1882, he received notice and information from the Comptroller of the Currency of the United States and his agents, then being in the lawful possession of said bank and all the assets, records, and books of account of said banking association, with the duty imposed upon them to ascertain and report the standing and condition of said bank, that said bank was insolvent; that its capital stock was wholly lost; that the debts and liabilities thereof
7 were greater than the whole amount of its assets and its capital stock, and that said bank must pass into the hands of a receiver, and the payment of an amount equal to his capital stock in said bank at its par value would be then demanded of each stockholder under the provisions of section 5151 of the Revised Statutes of the United States, and enforced under the provisions of section 5234 of said statutes, for the payment of said debts and liabilities, unless said stockholders would voluntarily pay such amount, to be applied as aforesaid, thereby relieving themselves from any further liability under said section 5151 of the aforesaid statutes. Whereupon the defendant, relying upon such representations and assurances of said comptroller and his agents aforesaid, voluntarily paid, upon each and every share of the capital stock of said association owned by him, a sum of money equal to the par value of each of said shares, for the purpose of paying, and which was applied in payment of, the debts and liquidating the liabilities of said association, whereby the defendant fully satisfied and discharged all the liability imposed upon him by said section 5151 of said statutes and became fully discharged from the liability set forth against him in the plaintiff's declaration; and in consequence of which payment the defendant says that the said Comptroller of the Currency had no power or authority to make, order, or levy any such assessment as is described in said declaration.

And the defendant, further answering, says that he has fully paid, satisfied, and discharged the alleged claim and liability set forth against him in the plaintiff's declaration.

And the defendant, further answering, says that in January, 1882,

the stockholders of said association voluntarily made an assessment upon all the shares of stock by them held therein, to the amount of one hundred per centum upon the par value thereof, which said assessment upon the shares held by the defendant was paid by him, and the money so paid appropriated to the payment of the debts of said association, whereby the defendant was discharged from the liability set forth in the declaration, and said comptroller deprived of the power to make or order any such assessment as is described in the declaration.

And, further answering, the defendant says that in the month of September, in the year 1881, an attempt was made by the directors of said banking association to increase its capital stock to one million dollars by the issue of 5,000 shares of new stock; that said attempt was never carried out or perfected; that new stock in said banking association, with a capital of one million dollars, was never issued, but that certain other so-called new stock was fraudulently, irregularly, and illegally issued, and that in ignorance of the facts the defendant became the holder of some of said so-called new shares; that the defendant was induced to become the holder of said so-called new stock by fraud, and by being induced to believe, and believing, that the same was regularly and legally issued to the amount of 5,000 shares ($500,000), and that at the time of such issue said bank was solvent; whereas in fact said shares were not issued to said number or amount, nor in conformity to law, and said bank was then deeply and wholly insolvent.

8 And, further answering, the defendant says that whatever cause of action ever existed upon any such shares of stock as are described in said declaration existed upon stock held by the defendant as executor, administrator, guardian, [or] trustee, and that this defendant in said capacity has not in his hands any assets with which to pay said assessment, or any part thereof, and that this defendant is not personally liable therefor.

By his attorney, BENJAMIN N. JOHNSON.

This cause was thence continued to the October term, A. D. 1884, when, on the eleventh day of November, the following agreement was filed:

*Agreement to Waive Trial by Jury.* (*Filed November* 11, 1884.)

In the above action the parties thereto waive a trial by jury and agree that said action be submitted to the court.

A. A. RANNEY,
*Attorney for Plaintiff.*
BENJAMIN N. JOHNSON,
*Attorney for Defendant.*

This cause was thence continued to this present term, when, on the third day of September, A. D. 1885, the same comes on to be heard and is fully heard by the court. Thereupon the court make their findings of facts in this cause and direct that the same be filed as of September 8, A. D. 1885, and the same are filed accordingly as follows:

9 *Findings of Facts by the Court.* (*Filed as of September* 8, 1885.)

The court makes the following findings of facts—Le Baron B. Colt, circuit judge:

*Statement of Facts Found by the Court.*

The Pacific National Bank was organized and constituted a corporation as a national banking association, by virtue of the laws of the United States relating to national banks, on or about the tenth day of October, 1877, and located in Boston. Its articles of association, marked "Exhibit 1," and also its by-laws, marked "Exhibit 2," are hereto annexed.

The capital stock was fixed in said articles of association at $250,000, with the right to increase the same to a sum not exceeding $1,000,000. The capital of $250,000 was paid in cash, and said bank commenced and continued the banking business with that capital until the eighth day of November, 1879, when its capital was increased to $500,000, and the increase paid in in cash, and said bank continued its business until on or about the thirteenth day of September, A. D. 1881, when certain proceedings were had with reference to a further increase of the capital stock to $1,000,000. These proceedings were as follows: A vote was passed at a meeting of the directors of said bank held in Boston Sept. 13, 1881, increasing the capital stock to $1,000,000, a copy of which record of the meeting is hereunto annexed, marked "Exhibit 3."

The board of directors consisted at that time of twelve persons.

A notice of the passage of that vote was sent by the cashier of said bank to each stockholder, a copy of which is hereunto annexed, marked "Exhibit 4."

The whole amount of the increase of capital to $1,000,000, being $500,000 in addition to the old stock, was never taken or paid in, and no notice was ever transmitted to the Comptroller of the Currency that said additional $500,000 had been paid in, or that the whole amount of such proposed increase of the capital to
10 $1,000,000 had been paid in; and the comptroller never issued a certificate stating that said capital stock had been increased to the amount of $1,000,000, voted on said thirteenth day of September, 1881, as hereinbefore stated; nor did said comptroller ever certify his approval of such increase, or that it had been duly paid in as a part of the capital of said association, and no action was taken by him respecting any increase of stock from that of $500,000, except as hereinafter stated.

Only $461,300 of said proposed increase of $500,000 was ever subscribed, taken, or paid in, all of which was paid in prior to Nov. 18, 1881, and was used in the general business of the bank with its other funds.

On the eighteenth day of November, 1881, said bank became unable to meet its debts and liabilities, suspended payment thereof, failed to redeem its circulating notes, and thereupon closed its doors to business.

Daniel Needham, a duly appointed examiner of national banks,

having made an examination of said bank, reported its condition to the Comptroller of the Currency, and was on said eighteenth day of November, 1881, placed in charge and possession of said bank and all its funds, assets, records, and books by said comptroller. Said bank remained under the exclusive charge and in the possession of said Needham, with its doors closed to business, until on or about March 18, 1882, the directors thereof having in the meantime no possession or control over the assets of said bank, or the moneys received or paid out on account of the bank, except under the supervision, control, and authority of said examiner.

In a report made to the Comptroller of the Currency by Examiner Needham on or about the twenty-ninth day of November, 1881, he makes the following statement, viz:

In looking over the assets and liabilities I consider the bank and its shareholders in a most precarious condition, and unless Mr. Weeks can furnish the equivalent of at least $500,000 in current funds, and the stockholders pay in $1,000,000 more, I would not consider even the possibility of reorganization; * * * the stockholders must, in any event, for the time being, sink their entire capital. * * * My view of the situation, from the first, has been
11 of the most serious character. Much of the paper upon which reliance is placed to me looks doubtful, and I am yet to be convinced that the losses may not approximate $1,750,000, possibly more.

A copy of said report, except the schedule annexed to it, is annexed, marked "Exhibit 5."

Dec. 13, 1881, the comptroller sent a letter to Needham, a copy of which is hereunto annexed, marked "Exhibit 6."

Dec. 14, 1881, Needham replied by letter, a copy of which is hereunto annexed, marked "Exhibit 7."

A copy of the resolution passed by the directors, and forwarded to the comptroller, Dec. 14. 1881, and referred to in Needham's said letter of Dec. 14, 1881, is hereunto annexed, maked "Exhibit 8."

During the suspension of said bank, viz., Dec. 13, 1881, the directors of said bank passed the following vote, viz:

Voted, That whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1;

And whereas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in:

Voted, That said $38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

Voted, That the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part

of the capital of this association, and that he be requested to issue his certificate of said increase to this association according to law.

On the same day J. M. Pettengill, cashier of said bank, acting under direction of said directors and upon the suggestion of the comptroller that such a certificate should be sent to him, sent the following certificate to the Comptroller of the Currency, sworn to by the cashier, viz:

12 PACIFIC NATIONAL BANK OF BOSTON,
*December* 13, 1881.

To the Comptroller of the Currency, Washington, D, C.:

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased pursuant to the articles of association of said bank in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred [and] sixty-one thousand three hundred dollars.

[SEAL.] J. M. PETTENGILL, *Cashier.*

Which was accompanied by a copy of the foregoing vote of the directors passed Dec. 13, 1881; upon the receipt of which the comptroller, Dec. 16, 1881, sent to the directors of the bank the following certificate:

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Dec.* 16, 1881.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston, Mass.," has been increased in the sum of four hundred and sixty-one thousand three hundred dollars, in accordance with the provisions of its articles of association, and that the whole amount of such increase has been paid in:

Now, it is hereby certified that the capital stock of "The Pacific National Bank of Boston, Mass.," aforesaid has been increased as aforesaid in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature.

[SEAL.] JOHN J. KNOX,
*Comptroller.*

There was no vote of the stockholders of said association passed relating to increase or reduction of its capital stock.

On the same sixteenth day of December, 1881, the Comptroller of the Currency sent to the Pacific National Bank the following communication, viz:

13 WASHINGTON, *Dec.* 16, 1881.

The Pacific National Bank of Boston, Massachusetts:

The entire capital stock of the Pacific National Bank of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand three hundred (961,300) dollars, having been lost, notice is hereby given to said bank, under the provisions of section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent. upon its shareholders *pro rata* for the amount of capital stock held by each, and that if such deficiency shall not be paid, and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association according to the provisions of section 5234 of the Revised Statutes of the United States.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL.] JOHN JAY KNOX,
*Comptroller of the Currency.*

And at the same time forwarded a letter to Examiner Needham as follows, viz:

WASHINGTON, *Dec.* 16, 1881.

SIR: Your letter of the 14th inst. is received and contents noted. I have this day transmitted to the directors of the Pacific National Bank of Boston my certificate of approval of the increase in its capital stock, thus making the aggregate capital $961,300, upon which an assessment of 100 per cent. has just been ordered.

You will please remain in charge of the bank, either in person or by a representative (if the latter your clerk should be selected), until the full amount of the assessment shall have been paid in, reporting to me from time to time the progress made in this direction.

Very respectfully, JNO. J. KNOX,
*Comptroller.*

Daniel Needham, national bank examiner, Boston, Mass.

On Jan. 10, 1882, during the time of the suspension of said bank the stockholders held their annual meeting, being the only
14 meeting of the stockholders held since Jan. 11, 1881, the notice of which was as follows:

*Pacific National Bank.*

The annual meeting of the stockholders of this bank for choice of directors and for any other business that may legally come before them will be held at their banking rooms, 105 Devonshire street, on Tuesday, Jan. 10, 1882, at 11 o'clock a. m.

J. M. PETTENGILL, *Cashier.*

Which was duly published in the Boston Daily Advertiser.

A copy of the record of said meeting is annexed, marked "Exhibit 9."

The total amount paid in by the stockholders on the assessment agreed upon at said meeting [of] Jan. 10, 1882, was $742,800, and was all paid in prior to May 20, 1882.

On said March 18, 1882, by permission of the Comptroller of the Currency, the directors took possession of the assets of said bank, opened its doors to business, and continued to do a general banking business, loaning money, receiving and paying deposits, and paying debts and expenses, until the twentieth day of May, 1882, but made no losses on new loans during that period. The bank was closed to business on said May 20, 1882, and the directors voted to go into liquidation; and thereupon Linus M. Price, the plaintiff, was appointed receiver thereof by the Comptroller of the Currency, and has ever since been in charge of said bank and its assets, books, papers, and records.

Record of directors' meeting, Nov. 19, 1881, is annexed, marked "Exhibit 10."

Letter, Needham to Knox, Nov. 26, 1881, is annexed, marked "Exhibit 11."

The report of Needham to the comptroller, dated March 11, 1882, embracing Needham's letter to the directors and their reply, is annexed, marked "Exhibit 12."

A communication dated March 14, 1882, signed by W. J. Best and approved by Lewis Coleman and other directors, as per their indorsement thereon, addressed to the comptroller, was forwarded to him, a copy of which is annexed, marked "Exhibit 13."

The reports of Needham and directors in this statement
15 state correctly the assets and liability of the bank at the time reported, but the assets did not prove of the value therein stated.

The amount due depositors March 18, 1882, was $4,101,365.91. The amount of deposits made between March 18, 1882, and May 20, 1882, was $2,338,617.21. The amount due depositors May 20, 1882, was $2,052,957.82, of which $62,693.40 is due to new depositors.

The receiver had realized from the assets of the Pacific National Bank that came into his possession, in cash, $185,266.84, prior to June 23, 1883, and the best judgment he could form June 23, 1883, of the value of the remaining assets was $290,000; the nominal value of the assets which came into his hands at the time he took possession of the bank was about $3,400,000; the actual value of the same assets was less than $500,000; the amount of the liabilities of the bank at the time he took possession, on the twenty-third day of May, 1882, was $2,400,000.

The assets which were in the bank Nov. 18, 1881, came into the receiver's hands when he took possession of the bank, except such as had been collected and applied to the payment of the debts and expenses of the bank and such as had been surrendered on compromise in settlement of doubtful assets.

16 The bank on resumption failed to secure again the confidence of the business community; they found that they could do, and did in fact do, very little business in banking, the bank being compelled to have a rediscount at other banks of all paper discounted by it in order to put it in funds with which to meet present liabilities.

"On September 13, 1881, and long before that date, the surplus and undivided profits of said bank then and for some time thereafter nominally standing upon the books of said bank had been in fact exhausted, and the capital stock of the said bank had been wholly lost through losses by bad debts and by loans improvidently made by said bank; * * * in fact, the bank at that time had lost its entire capital and was then insolvent; * * * said bank when it suspended or failed, Nov. 18, 1881, was deeply and hopelessly insolvent; * * * on Sept. 13, 1881, the directors voted an increase of the capital stock, the old stockholders having the right to take up the new stock at par; the actual condition of the bank was misstated to or concealed from the stockholders and the Comptroller of the Currency, and thereby the stockholders were induced to take up the new stock at par, and to pay into the bank money for the same, to the amount of $461,300; * * * the bank after obtaining the sum of $461,300 for said new stock continued in business till Nov. 18, 1881, when it
17 failed; at the time of the failure the capital of the bank had all been lost, together with the $461,300 paid in for subscriptions to new stock, that being all which was subscribed for on the increase voted Sept. 13, 1881.

An assessment was made by the Comptroller of the Currency, and demand of payment thereof duly made, as is stated in the declaration in this action.

The whole amount collected of the shareholders by voluntary assessment, $742,800, was used by the bank to pay its debts to creditors.

Creditors to the amount of $2,104,931.26 signed an agreement of extension, a copy of which is annexed, marked "Exhibit 14," all signed before March 18, 1882.

Three creditors, after March 18, 1882, and before May 20, 1882, brought suits against the bank upon claims amounting in the aggregate to $55,000, in which assets were attached to the amount of $156,000, and these suits are still pending. To dissolve these attachments bonds were given by the bank, one March 24, 1882, in the penal sum of $25,000; one April 29, 1882, in the penal sum of $20,000; one March 31, 1882, in the penal sum of $30,000. On each of
18 these bonds Lewis Coleman and John Shepard were sureties. To indemnify them against liability as such, assets of the bank were placed in their hands to the nominal value of $156,000, being a part of the $3,400,000 assets which came into the hands of the receiver and are among those classed doubtful by the receiver.

There are new liabilities contracted subsequent to March 18, 1882, to an amount of $200,000 (including the $62,693.40 due new deposit-

ors), being indebtedness due to individual depositors and to banks, and balance due on notes rediscounted.

The sum of $643,700 only had been paid on the voluntary assessment voted at the meeting of Jan. 10, 1882, before March 18, 1882, and $99,100 was paid in addition thereto after that date, and before May 20, 1882. The rest of the one hundred per cent. voted at said meeting has never been paid.

Circulars, copies of which are annexed, marked respectively Exhibits 15, 16, 17, were issued and sent, Exhibit 15 to the depositors, Exhibit 16 to those who had not then paid the voluntary assessment aforesaid, and Exhibit 17 to creditors of the bank.

19 *Exhibits Annexed to Findings of Facts by the Court.*

EXHIBIT 1.

*Articles of Association.*

For the purpose of organizing an association to carry on the business of banking under the sections of the Revised Statutes which authorize the organization of national banking associations, approved June 22d, 1874, and of subsequent acts in addition to or amendatory thereof, the undersigned subscribers for the stock of said association do enter into the following articles of association:

First. The name and title of this association shall be "The Pacific National Bank of Boston."

Second. The place where its banking house or office shall be located and its operations of discount and deposit carried on and its general business conducted shall be in the city of Boston, county of Suffolk, and State of Massachusetts.

Third. The board of directors shall consist of from five to twelve stockholders, and the following persons—Leonard Whitney, Jr., Gideon P. Brown, Marcellus P. Springer, John H. Sanborn, Edw'd C. Huxley, Moses B. Tower, Edwin Ray, Edwin M. Fowle, J. Henry Whitaker, Arthur Sewall, George C. Rand, and Abner I. Benyon—are hereby appointed directors of this association, to hold their offices as such until the regular annual election takes place, pursuant to the fourth article of these articles of association, and until their successors are chosen and qualified.

Fourth. The regular annual meetings of the stockholders for the election of directors shall be held at the banking house of this association on the second Tuesday of January of each year; but if no election shall be held on that day it may be held on any other day, according to the provisions of section 5149 of the Revised Statutes; and all elections shall be held according to such regulations as may be prescribed by the board of directors not inconsistent with
20 the aforesaid provisions of the said section 5149 of the Revised Statutes.

Fifth. The capital stock of this association shall be two hundred and fifty thousand dollars, to be divided into shares of one hundred

dollars each; but the capital may be increased according to the provisions of section 5142 of the Revised Statutes to any sum not exceeding ten hundred thousand dollars; and in the case of the increase of capital of the association each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be president of this association, who shall hold this office (unless he shall be disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director, and they shall have power to elect a vice-president, who shall also be a member of the board of directors, and to elect or appoint a cashier and such other officers and clerks as may be required to transact the business of the association, to fix the salaries to be paid to them, and continue them in office or dismiss them, as in the opinion of a majority of the board the interests of the association may demand. They shall have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the association, and to regulate the manner in which such increase shall be made, and generally to do and perform all the acts that it may be legal for a board of directors to do under the Revised Statutes aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make under said Revised Statutes for the general regulation of the business of the association and the management and administration of its affairs, which by-laws may prohibit, if the directors shall so determine, the transfer of
21 stock owned by any stockholder who may be liable to this association, either as principal, debtor, or otherwise, without the consent of the board.

Seventh. This association shall continue for the period of twenty years from the date of the organization certificate, unless sooner dissolved by the act of its stockholders, owning at least two-thirds of its stock, who may dissolve and close up the association in such manner as they may deem to be for the interest of the stockholders and creditors of the association, but subject to the restrictions, requirements, and provisions of the Revised Statutes.

Eighth. These articles of the association may be changed or amended at any time by stockholders owning a majority of the stock of the association in any manner not inconsistent with the Revised Statutes, and the board of directors or any three stockholders may call a meeting of the stockholders for this purpose.

In witness whereof we have hereunto set our hands this tenth day of October, eighteen hundred and seventy-seven.

LEONARD WHITNEY, JR.
GIDEON P. BROWN.
MARCELLUS P. SPRINGER.
JOHN H. SANBORN.
EDWARD C. HUXLEY.
MOSES B. TOWER.
EDWIN RAY.
EDWIN M. FOWLE.
JAMES H. WHITAKER.
GEORGE C. RAND.
ARTHUR SEWALL.
ABNER I. BENYON.

EXHIBIT 2.

*By-Laws of the Pacific National Bank.*

Elections.

SECTION 1. The regular annual meeting of the stockholders of this bank for the election of directors shall be held at its banking house on the second Tuesday of January of each year between
22 the hours of 10 and 4. Fourteen days' notice of the time and object of said meeting shall be given by the cashier by publication in some newspaper published in Boston. At said meeting three judges of the election shall be appointed, who shall hold and conduct the same, and who shall, after the election has been held, certify under their hands to the cashier the result thereof and the names of the directors elect.

SEC. 2. The cashier, upon receiving the certificate of the judges of the election, as aforesaid, shall cause the same to be recorded upon the minute book of the bank, and shall notify the directors elect of their election and of the time at which to meet for the purpose of organizing the new board.

SEC. 3. If for any cause the annual election of directors should not be held on the day above named, the board shall order the election on some other day, of which special election notice shall be given, judges appointed, and returns made according to the requirements of sect's 1 and 2.

Officers.

SEC. 4. The officers of this bank shall be a president, cashier, teller, book-keeper, and such other officers as may be required for the prompt and orderly transaction of its business.

SEC. 5. The president shall hold his office, unless he shall resign or become disqualified, for the current year for which the board, of which he shall be a member, was elected. In case a vacancy shall occur in the board of directors during the current year it shall be filled by the board.

SEC. 6. The cashier and subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SEC. 7. The cashier shall be responsible for all moneys, funds, and valuables of the bank which may come into his possession, and shall give bonds, with security, to be approved by the board, in the penal sum of twenty thousand dollars ($20,000) conditioned for the faithful and honest discharge of his duties, and he will faithfully apply and account for all such moneys, funds, and valuables, and deliver the same, on proper demand, to the order of the
23 directors of the boards, or to the person or persons authorized to receive them.

SEC. 8. The teller shall be responsible for all such sums of money, property, and funds of every description as may from time to time come into his possession as teller, and shall give bonds, with satisfactory security, in the penalty of ten thousand dollars ($10,000) conditioned for the faithful and honest discharge of his duties as teller, and that he will faithfully appply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller to the order of the directors, or to such person or persons as may be authorized to demand and receive the same. The book-keeper and all other officers and clerks shall give bonds, with security, in such sums as the board may require.

Seal.

SEC. 9. The following is an impression of the seal adopted by the directors of this bank :

(IMPRESSION OF SEAL.)

Conveyance of real estate.

SEC. 10. All transfers and conveyances of real estate shall be made under the seal of the bank in accordance with the order of the board, and shall be signed by the president and cashier.

Increase of stock.

SEC. 11. Whenever an increase of stock shall be determined upon it shall be the duty of the board to notify all the stockholders of the same and cause a subscription to be opened for such increase, and each stockholder shall have the privilege of subscribing for such number of shares of new stock as he may be entitled to subscribe for, in proportion to his existing stock in the bank. If any stockholder should fail to subscribe for the amount of stock to which he may be entitled within a reasonable time, which shall be stated in the notice, the directors may determine what disposition shall be made of the privilege of subscribing for the new stock.

24 Business of the bank.

SEC. 12. The bank shall be open for business at such hours as the directors shall determine of each day in the year excepting Sundays and legal holidays.

Minutes.

SEC. 13. The articles of association of this bank and the returns of the judges of the elections shall be recorded in the minute book and also the proceedings of the directors at all regular and special sessions. The minutes of all meetings shall be recorded by the cashier.

Transfers of stock.

SEC. 14. The stock of this bank shall be assignable only on the books of the bank, subject to the restrictions and provisions of the act, and a transfer book shall be kept, in which all assignments and transfers of stock shall be made.

SEC. 15. Certificates of stock signed by the president and cashier may be issued to stockholders, and the certificates shall state upon the face thereof that the stock is transferable only upon the books of the bank, and when stock is transferred the certificates thereof shall be returned and canceled from certificates issued.

Expenses.

SEC. 16. The current expenses shall be paid by the cashier, who shall cause the same to be entered upon a book kept for that purpose and open for inspection of the board at all times.

Contracts.

SEC. 17. All contracts, checks, drafts, certificates of deposit shall be signed by the president or cashier.

Examination.

SEC. 18. There shall be appointed by the board every six months, and one week at least previous to the declaration of a dividend, a committee, whose duty it shall be to examine the affairs of the bank, to count its cash and compare its assets and liabilities with the balances on the general ledger, for the purpose of ascertaining whether or not the books are correctly kept, and whether or not the bank is in a solvent condition and can properly pay a dividend. The result of said examination shall be reported to the board at the next regular meeting.

Meetings.

SEC. 19. The regular meetings of the board shall be held on such days as the directors may determine. Special meetings may be called by the president or cashier.

Quorums.

SEC. 20. A majority of the directors, including the president, shall be a quorum to do business.

SEC. 21. These by-laws may be changed or amended by a vote of two-thirds of the directors.

EXHIBIT 3.

TUESDAY, *Sept.* 13, 1881.

Present: Messrs. Benyon, Coleman, Dyer, Shepard, Cassidy, Whitaker, March, and Fowle.

Discounted notes per record 51, Nos. 139 to 168, were approved.

Voted, That the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in an equal amount to that now held by them.

Attest: J. M. PETTENGILL, *Cashier.*

EXHIBIT 4.

A. I. Benyon, president. J. M. Pettingill, cashier.

PACIFIC NATIONAL BANK, 105 DEVONSHIRE STREET,
BOSTON, *Sept.* 13, 1881.

At a meeting of the directors of this bank, held this day, it was "Voted, That the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amounts to that now held by them."

26 Subscription to the new stock will be payable October 1st.

Parties desiring to anticipate payment will be allowed interest to that date at four per cent. per annum.

J. M. PETTINGILL, *Cashier.*

EXHIBIT 5.

*Report of Bank Examiner to Comptroller, Nov.* 18, 1881.

No. of bank, 2373.

Examiner's report of the condition of the "Pacific National Bank," located at Boston, in the county of Suffolk, State of Massachusetts, at 6 o'clock p. m., Nov. 18, 1881.

A. I. Benyon, president. J. M. Pettengill, cashier.

Resources:

| | | | Dollars. | Cts. |
|---|---|---|---|---|
| 1. | Notes and bills discounted | | 4,186,300 | 27 |
| 2. | Overdrafts | | 26,539 | 55 |
| 3. | U. S. bonds to secure circulation | | 500,000 | 00 |
| 4. | U. S. bonds to secure deposits | | | |
| 5. | U. S. bonds on hand | | | |
| 6. | Other stocks, bonds, and mortgages. See general remarks. | | | |
| 7. | Due from app'd reserve agents, viz. | | 273,500 | 00 |
| 8. | Due from other national banks | | 151,700 | 43 |
| 9. | Due from State banks and bankers | | 4,322 | 84 |
| 10. | Banking house | $ | | |
| 11. | Other real estate | | | |
| 12. | Furniture and fixtures | | | |
| 13. | Current expenses | $22,232 73 | | |
| 14. | Taxes paid | 289 62 | | |
| | | | 22,522 | 35 |

| | | | Dollars. | Cts. |
|---|---|---|---|---|
| 15. | Premiums paid | | 8,593 | 75 |
| | Interest | | 38,431 | 54 |
| | 16. Checks and other cash items | | 1,466,243 | 84 |
| 27 | 17. Exch's for C. H., includ'g gold ch'ks | | | |
| | 18. Bills of other national banks | | 9,694 | 00 |
| 19. | Bills of state banks | | | |
| 20. | Fractional currency (includi'g nickels) | | | |
| 21. | Specie, viz: | | | |
| | Silver coin | $3,049 68 | | |
| | Gold coin | | | |
| | Gold treasury notes | | | |
| | | | 3,049 | 68 |
| 22. | Legal-tender notes | | | |
| 23. | U. S. cert's of dep. for legal tenders | | | |
| 24. | 5 p. c. red'n fund with Treas. U. S. | | 13,500 | 00 |
| 25. | Other funds with Treas. U. S. | | | |
| | Cash short | | 5,311 | 19 |
| | Total | | 6,709,709 | 44 |
| | Liabilities: | | | |
| 1. | Capital stock paid in | | 500,000 | 00 |
| | New " " | | 461,370 | 00 |
| 2. | Surplus fund | | 74,142 | 82 |
| 3. | Discount | $65,135 67 | | |
| 4. | Exchange | | | |
| 5. | Interest | | | |
| 6. | Premiums | | | |
| 7. | Profit and loss | 7,080 05 | | |
| | | | 72,215 | 72 |
| 8. | Circulation received | $450,000 00 | | |
| | On hand and returned | | | |
| | | | 450,000 | 00 |
| 9. | State bank circulation outstanding | | | |
| 10. | Dividends unpaid | | 435 | 00 |
| 11. | Individual deposits, viz: | | | |
| | Subject to check | $1,062,540 10 | | |
| | Demand certif's | 1,695,500 35 | | |
| | Time certificates | | | |
| | Certified checks | | | |
| | Cashier's checks | | | |
| | | | 2,758,140 | 00 |
| 28 | 12. United States deposits | | | |
| | 13. Deposits of U. S. disbursing officers | | | |
| 14. | Due to national banks | | 1,473,240 | 18 |
| 15. | Due to State banks and bankers | | 137,695 | 18 |
| 16. | Notes and bills rediscounted | | 685,589 | 61 |
| 17. | Bills payable | | | |
| | Cash over | | 96,879 | 48 |
| | Total | | $6,709,709 | 44 |

*Dividends and Surplus.*

(Section 5109 of the Revised Statutes of the U. S.)

Date of last dividend, July 1, 1881; amount, $15,000; carried to surplus, $14,239.48.

*Loans and Discounts.*

| | |
|---|---|
| On paper with two or more individual or firm names | $2,265,315 17 |
| On single-name paper (one person or firm), without other security | 301,518 35 |
| On mortgages and other real estate security | 252,659 17 |
| On U. S. bonds payable on demand | |
| On other stocks, bonds, etc., payable on demand | 1,366,807 58 |
| All other loans | |

Included in the above are—

| | |
|---|---|
| Bad debts, as defined in section 5204 of the Revised Statutes of the U. S. | |
| Other suspended and over-due paper | 371,095 87 |
| Liabilities of directors (individual and firm) as payers | 204,747 30 |

Loans exceeding the limit prescribed by section 5200 of the Revised Statutes of the U. S., viz:

N. M. Jewett, $100,000; Henry Waterman, $140,000; Geo. E. Horn, $100,000; Chicago, Burlington & Quincy R. R. bonds, $100,000; Katahdin railroad bonds, $99,500; T. C. Weeks, $192,850.

29 *General Remarks.*

Directors Pacific National Bank.

| | |
|---|---|
| Leonard Whitney. | Geo. N. March. |
| E. M. Fowle. | Lewis Coleman. |
| Arthur Seward. | Edwin Ray. |
| John E. Cassidy. | J. H. Whitaker. |
| M. P. Springer. | John Shepard. |
| J. H. Sanborn. | A. I. Benyon. |

In my last examination of this bank I called especial attention to its manner of making loans by the issuing of certificates of deposit, and suggested that, in a financial crisis, such a system might be attended with peril. I also called attention to the names of parties who were borrowers, many of which were new to me, and to the character of collaterals, many of which I know nothing about.

During my examination, which continued through many days, at times entire days, and at times fragments of days, with examinations elsewhere carried on to a greater or less extent, I saw some of the directors, Mr. March and Mr. Whitney, more than any others, but to all that I saw I expressed anxiety for the welfare of the bank, on account of its loans based on its credit represented by certificates of deposit, and the peculiar character of many of its col-

laterals, about which I knew nothing, and urged the importance of a careful examination of the paper and securities of the bank and of the president's manner of doing business. The gentlemen that I saw all assured me that my urgently expressed requests should be complied with, and I felt comparatively easy, for I knew that my examination had been thorough, and, if the loans were good, the bank was in a healthy and prosperous condition.

The promises made, however, were never kept; and subsequently to the forwarding of my report to the comptroller, when I inquired of Mr. March, who is still one of the board of directors, if the examination by the directors had been made, he replied that it had not; that the directors met for the purpose of examination, and the president, being informed of the purpose of the meeting of the directors, "flew into a passion," and said, "If the directors cannot trust the thorough examination of Col. Needham, I will resign." Other conversations between a member or members of the board and the president was had on this matter, and the examination was abandoned. I replied to Mr. March in language substantially as follows: The responsibility of the bank is upon the directors, and they can never shield themselves by placing it upon the president.

Had the examination of the directors been made, the character of the collaterals and the system of doing business by the president would have unquestionably been changed, and the result would have been different.

In reading the reply of the president to the letter of the Comptroller of Feb. 19th, I find that he promised to comply with the express wishes of the comptroller, but it was in promise alone that the compliance was made. A more reckless management than had ever before been conceived almost immediately after began. The credit of the bank was loaned to a greater and greater extent, and the ambition of the president seemed to be not so much security as how large he could swell his loans with a pledge of the borrower that the certificates of deposit on the money loaned should not be drawn for a period of time after the loan was affected.

For instance, in September, 1881, he loaned one hundred thousand dollars to Geo. E. Horn, of New York, and took as the only security a blank check signed by John Steward. This check has only the signature, no date, no amount, and might have been given for one thing or another, or, as far as I could see, might have been stolen from a check book. We have written to New York to make inquiry, but as yet have no reply.

Another instance: Oct. 7th 1881, N. M. Jewett borrowed the credit of this bank to the amount of eighty thousand dollars, and an acceptance of an item of real estate to the amount of twenty thousand dollars established an aggregate debit of one hundred thousand dollars. Where the item of real estate called twenty thousand came from, I am as yet unable to ascertain. The bank now shows to represent this hundred thousand dollars a mortgage of real estate in Boston, and, so far as I can see, the security was taken for an original debt, and is contrary to the statute.

One instance more will be enough to completely establish my

charge of reckless management. In October, 1881, the bank loaned its credit to Henry Waterman for one hundred thousand dollars, and took for security $143,800 of the stock of the Southern Maryland railroad, which has no market value, and is, at the best, a very doubtful matter.

Now, at these times, the bank was absolutely poor, had no money whatever to loan, and the only possible advantage it could get was the temporay use of the means which its credit thus loaned represented, the parties promising not to draw on the credit for two or three months. It seems almost impossible to believe that these and many other equally hazardous transactions were entered into without some ulterior and hidden motive on the part of the president, but I have in vain failed to find one.

The certificates of deposit, in a large number of instances, represent the legitimate deposits of money; many of these draw interest. How large a number are certificates representing credit only I am unable to determine, but evidently this amount is of great
31 magnitude. I enclose herewith paper marked "A," which will show the individual and total certificates issued.

In the same way, by the issuance of certificates under promise that the money should not be drawn for a period of time, although no such expression is indicated on the certificate, the bank has carried on, within the last eight months, an enormous real estate business, to wit:

| | | |
|---|---|---|
| Of the Home Savings Bank it has purchased real estate in Newton | 10,000 | |
| From the same bank, real estate in Boston | 10,000 | |
| From the same, another item of real state in Boston | 4,500 | |
| From the same, French's wharf | 22,759 | 17 |
| From the Mercantile Savings Institution, real estate in Boston | 40,000 | |

These are all original and illegal transactions. The deeds of the first-named items bear date in Oct., 1881; of the third named, Apr. 4th, 1881; of the fourth, Oct. 12th, 1881, and of the fifth the date is Jan. 17th, 1881. I said to the president, in the presence of the directors, no such property was in this bank on the 31st of January, 1881, and he admitted, in all their presence, that the trade was not consummated until February, 1881, and that the deed was dated back. Most of this property is subject to mortgages, which the bank must carry if it continues to hold, and the bank holds nothing but the equities in its assets.

Together with the directors I have carefully gone over the call loan (so called), the aggregate amount of which, in round numbers, is sixteen hundred thousand dollars, and in marking off what might be considered doubtful, we have an aggregate of nearly one hundred thousand dollars, which would need time and care, and, if it came at all—and very likely a large portion of it might—would come very slowly.

This is independent of the one hundred thousand dollars of Horn,

to which I have heretofore alluded, and which has attached to it the blank check of John Steward.

In the discounts there appears the enormous aggregate of three hundred and seventy-one thousand and ninety-five $\frac{87}{100}$ "overdue."

This enormous amount has accumulated from about twenty thousand dollars, at the time of my January examination. I herewith send a detailed statement, marked "B." Many of these items have collateral, and are undoubtedly collectible, but a large amount will very likely be slow of collection.

| | |
|---|---|
| The bank has lodged at the Central National Bank of Boston, collateral to secure loans amounting to | $238,502 55 |
| At the Five-Cent Savings Bank | 107,000 |
| At Brown, Riley & Co.'s | 10,000 |
| At the Howard National Bank | 115,000 |

32 to secure loans, which, with the exception of the loan at the Central National, have a margin which will undoubtedly be realized to apply to the unsecured liabilities of the bank.

At the Central National, independent of the indebtedness acknowledged by this bank, is a claim of two hundred and fifty thousand dollars, dollars, which this bank holds nothing to represent. This claim on the part of the Central has the *prima facie* evidence of the checks of this bank on the Eliot. There is no doubt but that Mr. Weeks owes this amount to somebody; he admits that; but there is no evidence that he owes it to the Pacific. How the Central National comes in possession of the checks of the Pacific, if it does not owe it that amount, has been a matter of protracted investigation by me.

I have reached the conclusion that the checks were temporarily loaned and not returned, or that they were given for a consideration, and the representative of that consideration has been mislaid or destroyed.

The prospect of litigation to establish this question is very good.

"Other stocks, bonds, and mortgages" I called attention to in my preliminary report, of which I desire this to be the concluding part. That there would be a large loss on these items if a forced sale was made there can be no doubt.

All of the bank balances have been verified, with the exception of those noted on the sheet which I herewith send, marked "C." I do not think the differences of unverified balances are of any considerable magnitude.

I herewith also send a sheet marked "D," which contains a full and complete list of the cash items as they appear in the bank. Many of these items are undoubtedly collectible, and no excuse but reckless negligence on the part of the president and cashier can explain their accumulation. The Weeks checks, which constitute the great bulk of the list, to wit:

| | | | |
|---|---|---|---|
| Aug. 9th, 1881. | Check on Broadway National Bank, drawn by Weeks to the order of Day | | 10,000 |
| " 19, '81. | Drawn by Weeks to the order of Day | | 50,000 |
| Sept. 3, '81. | " | " | 25,000 |
| Nov. 15, '81. | " | " | 20,000 |
| " " " | " | " | 25,000 |
| " " " | " | " | 50,000 |
| " " " | " | " | 50,000 |
| " " " | Check of Nat'l Security Bank by Weeks to the order of Day | | 20,000 |
| " " " | On North Nat. Bank by Weeks to the order of Day | | 75,000 |
| " " " | On North Nat. Bank by Weeks to the order of Day | | 50,000 |
| " 17, " | On North Nat. Bank by Weeks to the order of Day | | 877,500 |
| | Aggregating | | 1,262,500 |

33 [are] unsecured. No difficulty was experienced in passing Weeks' checks through the clearing house until Aug. 9th, 1881, when ten thousand dollars came back and was carried in cash items.

On Aug. 19th one of fifty thousand dollars came back and was placed in cash items. On the 15th day of October checks aggregating three hundred and fifteen thousand dollars came back, and this decided the temporary fate of the bank.

The check given on the seventeenth was a check in settlement, and, according to the books of this bank, represents the entire balance due from Weeks to this bank.

The transaction of taking checks of this bank on the Eliot National Bank, and paying in checks drawn on other national banks which went regularly through the clearing, had been prosecuted by Weeks, to a greater or less extent for a year. During this long time the transactions were made to balance every night. The transactions began in a comparatively small and, so far as I can see, in an apparently legitimate way. From time to time they grew until the aggregate reached well into a million a day.

In the earlier history of these transactions, and for a long time afterward, reaching into the early summer, many gentlemen believe that Mr. Weeks was perfectly solvent, and, had it not been for the crisis precipitated by the assassination of the president, his failure would not have occurred. Be this as it might, there can be no question as to the illegitimacy of these tranactions, out of which the Pacific National Bank never realized one single dollar. No motive, except to do an immense business, can be assigned for the strange conduct in allowing these transactions on the part of the president.

In looking over the assets and liabilities I consider the bank and its shareholders in a most precarious condition, and, unless Mr. Weeks can furnish the equivalent of at least five hundred thousand dollars in current funds and the stockholders pay in one million more, I would not consider even the possibility of reorganization.

I come now to the final consideration of this terrible catastrophe—terrible to the innocent depositors who may have the inconvenience of long delay and possible loss; terrible to the shareholders who must, in any event, for the time being, sink their entire capital; terrible for the directors, who had timely warning from the examiner and from the honorable Comptroller of the Currency with regard to the illegal and careless manner in which the president was conducting the business of the bank, and terrible for the business interests of society, which receives the shock of violated trust so detrimental to all its interests.

Bringing the first great fault to the door of the directors, who, when notice was given, should have persisted in a most rigid examination, I come to the cashier. In his custody were the funds of the bank. To him was submitted every item intended for the clearing. He was a man of long experience. He was taken from a
34 neighboring bank, and the directors were influenced in his selection by his reputation of a careful and conservative man. No one knew better than he that clearing-house checks always represented cash. Out of his hands every day passed the checks that were given to Weeks, and it was for him to know whether or not he received an equivalent.

Could it be possible that for months a business of drawing and balancing checks on the part of Mr. Weeks could have been continued from day to day and a man of long and varied experience, like the cashier of this bank, have no suspicion? If it is possible to imagine that, for the nine months of increasing business of this character, the cashier had no suspicion on the ninth day of August, 1881, when the first check of Mr. Weeks of ten thousand dollars came back, there could be excuse no longer; but even then no communication was made to a single member of the board of directors, and the drawing of checks and the acceptance of Weeks' checks as an equivalent went on.

On the 19th of August a check of $50,000 came back, but still not a word from the cashier, and on the third of September another of $25,000, but yet not a word, although these returned and dishonored checks were entered day after day in "cash items" by the teller. The transactions still continued without one word of disclosure being made to the directors from this trusted servant, who was receiving a large salary to guard the interests of the bank.

Confidence must begin somewhere; without confidence there can be no credit; without credit there can be no bank; without the bank there can be no extended business. The directors had the right to confide in their cashier, certainly to the extent that he would not accept in exchange for the funds of the bank in the form of a clearing-house check anything that was not the equivalent of money. The cashier cannot hide behind the president. He is an independent officer of the bank, and his duties are well and clearly defined. His trust has been violated, and the immediate cause of this disaster is chargeable to him.

The president of this bank must be next considered. He was made president of this bank when the fiery tongue of scandal was

pursuing him with relentless ardor. How has he returned the confidence so freely given? No one knew better than he what was and what was not legitimate banking. He knew, for the Comptroller of the Currency had told him, that loaning the credit of the bank was illegitimate and perilous business. He knew that making loans through the medium of certificates of deposit was more dangerous than making loans on legitimate deposits. He knew the transactions of buying real estate, loaning on real estate, loaning in excess of the limit, loaning by the hundreds of thousands of dollars on questionable security and in a careless manner were all blameworthy and reprehensible. He knew that securing the deposit of a life insurance company by taking out life policies on himself and son and charging the premium of $1,041.05 to the bank was unparalleled in the history of banking. He knew that buying old stone taken as debris from city houses and issuing certificates amounting to eleven thousand dollars therefor was monstrous and reckless. He knew that continuing to prosecute his business in a manner condemned by the comptroller, and without asking the directors to share with him in the responsibility, was high-handed and unjustifiable. There is no excuse for these two high, trusted, executive officers of the bank.

The matter is still under advisement whether the stockholders will make good the losses or the bank go into the hands of a receiver.

The principal part of the "cash over" in the statement forwarded as a preliminary report belonged in the loan account. The principal part of the discrepancy in the loan account was the result of our hurried manner in taking it, and is now mostly explained.

The real estate all appears in the call loans, and I have treated it under the head of "On mortgages and other real estate security."

The classification of the loan is the best I could give in the present condition of affairs, time collateral loans being treated with the two-named paper.

In "other suspended and overdue" I have classified all the overdue and bad debts, finding it difficult to determine how much of this amount should be treated as "bad debts." My own judgment is that a very considerable amount of the "other suspended and overdue" should strictly be treated that way.

The question has been raised as to whether the new stock is liable to assessment under the law, the increased capital not being all paid in. Can you give me information on this point, as it is very important in the reorganization?

Of illegal and illegitimate transactions not mentioned elsewhere in this report may be stated the following:

| | | |
|---|---|---|
| An agreement with Taunton Savings Bank to deliver a deed of fifteen houses on Madison Square, Boston | ---- | 7,500 |
| Four bonds of Nantasket Co. | 4,000 | |
| One bond Pleasant Valley & Utah | 1,000 | |
| Taken of stockholder to represent balance due on new stock of the bank and standing in the assets as | ---- | 5,000 |

100 shares Pacific National Bank stock purchased for a customer, but no agreement by which the customer can be held ---- 10,400
Three notes of W. B. Worcester, 6,000 ---- 18,000

Worcester being a man whose responsibility and place of business are both unknown. In some form or other I have alluded to the most striking features of the loan account. In summing up the situation I have to say that on the 26th instant I made a statement of the condition of the bank to the directors. This statement
36 I preferred to put in writing, but as they objected to that, fearing it might reach the public and thus prejudice their case, I submitted it without manuscript. On the 29th, at the request of the directors, I made a statement to some forty gentlemen, composed of the directors and the largest stockholders of the bank, who had been invited in for consultation. This statement was also, at the request of the directors, made without manuscript, although, being made to a promiscuous body, it was much less complete than my first statement to the bank. At the adjournment of this meeting I was waited upon by a committee and presented with a letter, of which the following is a copy: Boston, Nov. 29th, 1881. Col. Daniel Needham, bank examiner. Dear Sir: At a meeting of the stockholders and directors of the Pacific National Bank held this day at the office of the association the following resolutions were adopted unanimously: Resolved, That the thanks of the directors, stockholders, and depositors of the Pacific National Bank are due, and are hereby tendered, to Col. Daniel Needham for his earnest efforts to ascertain the condition of the bank, as well as for the valuable suggestions he has made looking to its reorganization.—Signed, Lewis Coleman, chairman. I take the liberty to incorporate this communication into this report. The names of the directors, which will be found under the head of general remarks, are among the most honored names of Boston's business men, leaving out the name of A. I. Benyon. My view of the situation from the first has been of the most serious character. Much of the paper upon which reliance is placed to me looks doubtful, and I am yet to be convinced that the losses may not approximate seventeen hundred and fifty thousand dollars—possibly more. Although it must be admitted that the dishonored checks of Weeks precipitated this disaster, it is to me equally clear that the enormous issue of certificates as a matter of credit on illegal and questionable loans would have brought ruin in the end, and that the end could not be far off. In conclusion I can only say I have failed to find an explanation of these strange transactions, and, if not based upon criminality, must be explained by idiocy or insanity. I shall advise the Department immediately of the conclusion reached by directors.

DANIEL NEEDHAM, *Examiner.*

To the Comptroller of the Currency, Washington, D. C.

37 EXHIBIT 6.

OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *December* 13, 1881.

SIR: I had a conference with the committee who arrived here yesterday in reference to the affairs of the Pacific National Bank.

It is proposed to make an assessment for the full amount of the stock of the bank, and it is believed that when this is paid up the capital stock will be unimpaired and the bank in possession of abundant funds to meet all their obligations.

I request that you will, immediately on receipt of this letter, write me in reference to the present condition and prospects of the bank, and if you see any reason to doubt its ability to resume business, as proved.

Very respectfully, JNO. JAY KNOX,
*Comptroller.*

Daniel Needham, Esq., nat. bank examiner, 45 Milk street, Boston, Mass.

EXHIBIT 7.

OFFICE DANIEL NEEDHAM, NATIONAL BANK EXAMINER,
45 MILK STREET, BOSTON, *Dec.* 14*th*, 1881.

SIR: Your letter of the 13th is at hand.

In reply to your inquiry I will say: If Weeks will pay in on his unsecured loans five hundred thousand dollars, as has been proposed, and the arrangement with the Central National Bank with reference to the adjustment of the disputed claim is perfected and an obligation is given by the directors guaranteeing a certain amount of doubtful paper, which amount is stipulated in the resolution, a copy of which, after its passage, will be immediately forwarded to you by the board, then an assessment of one hundred per centum on the present capital of the bank, as it now stands on the books, would, in my judgment, make the bank solvent.

38 Many of the directors have the full confidence of the public, and, under the conditions I have specified above, I should have no doubt of the full ability of the bank to resume.

In speaking of the present capital upon which assessment must be made, I mean the old $500,000, together with the new $461,300, making subject to assessment $961,300. In my judgment it is most important that the bank should be revived if possible.

If it falls, the Central National must also fall, and the widespread injury could not be estimated.

I am gratified to say that the condition of the bank has been strengthened since it has been in my charge by the securing of some questionable debts, and careful management will undoubtedly save to the bank a large amount which would otherwise be lost.

If the bank goes on upon the plan now laid out, and which will be presented to you for approval within two or three days, and which embodies the features noted in this letter, then there must be a delay of some weeks, and I would like your approval to place my clerk in

charge during more or less of the temporary absence I may make in continuing my work of examinations elsewhere.

Very respectfully, DANIEL NEEDHAM,
*Nat. Bank Examiner.*

To Hon. John J. Knox, Comptroller of the Currency, Washington, D. C.

EXHIBIT 8.

*Resolutions of Board of Directors, Dec.* 14, 1881.

BOSTON, *Dec.* 14*th*, 1881.

At a meeting of the board of directors of the Pacific National Bank, held this day at the banking house, the following preamble and resolutions were unanimously adopted:

Whereas on the 18th day of November, 1881, it was discovered that the Pacific National Bank was unable to pay on demand its liabilities to depositors and creditors;

And whereas since the date named the directors, assisted
39 by Col. Daniel Needham, national bank examiner, and Wm. J. Best, have been engaged in an investigation to determine the liabilities and assets of said bank;

And whereas said investigation enables said directors to fix the apparent liabilities at $6,774,633.60 and the assets at the par or nominal value of $6,782,558.53, showing an apparent excess of assets over liabilities to the amount of $7,924.93;

And whereas said assets are not now worth their par or nominal value, but would probably realize in cash, with judicious management, $5,308,895.34, which would leave an apparent deficiency of $1,465,738.26;

And whereas, in the adjustment of the account of the Pacific National Bank with the Central National Bank, the latter has agreed, in the event of the reorganization of the Pacific National Bank, to yield of its alleged claims against the former the sum of $315,400, and has also agreed to return to the Pacific National Bank good assets of said bank now held by said Central National Bank as collateral to the amount of $55,252.55, thereby reducing the deficiency of the Pacific National Bank to $1,095,085.71;

And whereas, with such knowledge of the affairs of said Pacific National Bank as the directors have been able to obtain by diligent investigation and inquiry, they are of opinion that it should immediately be reorganized, in order fully to protect all of the interests involved;

And whereas the larger part of the assets of said bank consists of notes and bills discounted, of which a considerable portion could not now be converted into money without sacrificing the interests of the creditors of the association;

And whereas T. C. Weeks has returned to this bank $150,000 of its checks, and has agreed to return $350,000 of additional checks in a few days: Therefore,

Resolved, That, in the opinion of the directors of said bank, the

interests of both creditors and stockholders require its early reorganization.

Resolved, That the Comptroller of the Currency be requested to authorize the stockholders of the association to levy an assessment of 100% upon the par value of the capital stock now paid in, viz., $961,300, upon condition that said Weeks shall return to this bank $350,000 additional checks, as agreed, before said assessment shall be made.

Resolved, That, in the event said bank shall be reorganized and shall resume business with the approval of the Comptroller of the Currency, the board of directors will, and they do hereby, guarantee the payment of $133,785.71 out of the assets by them classed as "doubtful" and "bad," aggregating the sum of $1,473,663.19, and now treated by said directors as possessing no present money value, the condition of said guarantee being that it will cease and determine so soon and so far as the said sum of $133,785.71 shall have been realized from said "doubtful" and "bad" assets, and said directors shall be held only for so much of said sum of $133,785.71 as may not be realized from said "doubtful" and "bad" assets.

Resolved, That, in the opinion of said directors, said assessment upon the stock of said association and the said guarantee of $133,785.71 will place said association upon a sound financial basis; nevertheless, as time will be required to properly convert the assets of the association, which consist chiefly of notes and bills discounted, it is to the interest of the depositors and creditors to agree to a reasonable extension of time for the payment of their several claims. Recognizing this fact the Central National Bank has agreed to give an extension of one year from Jan. 1, 1882, on the whole amount of its claim as compromised, viz., $500,000, at 4% per annum.

Resolved, That a copy of these resolutions be forwarded to the Comptroller of the Currency and his approval asked of the scheme of reorganization herein set forth, and that he grant the directors until Jan. 15th, 1882, to perfect said scheme of reorganization.

A true copy.

(Signed) EDWIN W. FOWLE,
*Sec'y pro tem.*

EXHIBIT 9.

*Stockholders' Meeting.*

TUESDAY, *Jan.* 10, 1882—11 a. m.

The annual meeting of the stockholders of the Pacific National Bank was held at 11 o'clock this forenoon at the bank building on Devonshire street, about one hundred and fifty gentlemen being present. The meeting was called to order by the new president, Lewis Coleman, and J. H. Whittaker, of the board of directors, was chosen secretary. The records of the last meeting were read and approved.

President Coleman briefly alluded to the suspension of the bank Nov. 18, and to the circumstances which led to placing the books

and accounts of the bank in the hands of Col. Needham for examination. He then introduced the bank examiner, who presented the following report:

Col. Needham's report.

In accordance with the unanimous request of the directors of the Pacific National Bank I submit to you, somewhat in detail, the present condition of the bank and the history of the year which immediately precedes it.

41 On the 31st day of January last I came to the bank to make an official examination. I was welcomed by the president, and immediately commenced my work, taking the condition of the bank at the close of business that day. I continued the examination from day to day and time to time until its final conclusion—seeing, as I can now recall, only two of the directors besides the president, with whom I held conversation. To these gentlemen I spoke very freely of the character of the loans and the matter of issuing certificates, and urged the importance of a careful examination. In my report to the Government I called attention to what I considered defects and bad management, and, as a result of my report, the comptroller forwarded to the directors a communication, of which the following is a copy:

WASHINGTON, *Feb.* 19, 1881.

GENTLEMEN: The report of an examination of your bank, made on the 31st ult., has been received.

The report shows that the amount of funds in the bank available for reserve at the date of the examination was $196,385.17 less than the amount required by law. The deficiency is enormously large, and has, perhaps, been caused in part by the officers of the association considering and treating as available for reserve clearing-house gold certificates, which it holds to the amount of $195,000. The law, however (sec. 5192 United States Revised Statutes), provides that clearing-house certificates, representing specie or lawful money, specially deposited for the purpose of any clearing-house association, shall also be deemed to be lawful money in the possession of any association belonging to such clearing-house association, holding and owning such certificates within the preceding section; and, as your bank does not belong to the clearing-house association, the certificates referred to cannot be considered or counted as reserve. The examiner states that it would undoubtedly be for—

The interests of the other Boston banks,

as, of course, it will be for your own, to have your association admitted to the clearing-house, and it is hoped that some arrangement by which this can be accomplished will be devised and carried out. In the meantime, however, I must notify you that the reserve of the bank must be at once made good and kept so hereafter, paying due regard to the fact that the certificates above referred to cannot

be counted as any portion of the lawful money reserve of the association.

The liability of —— to the bank for money borrowed is reported as amounting to ——, and, if so, is excessive, contrary to law. Sec. 5200 United States Revised Statutes provides that the total liabilities to a national bank of any person, company, corporation, 42 or firm for money borrowed shall at no time exceed one-tenth part of its actual paid-in capital stock, and to this limit all accommodations granted by the bank should be confined. The indebtedness, if still excessive, must, without unnecessary delay, be reduced to at least the prescribed limit. It is stated in the report that ——, who is indorser upon the paper above mentioned, and also upon paper of ——, has himself borrowed —— from the bank. The examiner says that upon calling attention to the considerable amount loaned to parties, involving to a great extent the same interest, he was assured that the debt would be paid during the present month. I think that the accommodations of the bank should be more widely distributed.

The bank is reported to be liable to the amount of $898,812.99 upon demand certificates of deposit, of which certificates amounting to $503,500 are said to draw interest at the rate *at* from three to six per cent. With reference to the remainder of the certificates, which amount to $395,312.99, the examiner says: "Money is borrowed of —— by a pledge of discounted paper as collateral, and the said bank holds demand certificates to represent the amount. Loans are sometimes made by this

Issuing of demand certificates,

and parties securing loans in this way indorsed the certificates and pledge them as collateral, or, stipulating a time of payment for them, have them regularly discounted and thus raise money indirectly from other parties and banks. Of course such certificates do not bear interest, but the bank loans its credit, and in this way a very considerable amount of the demand certificates has been issued. I do not think this system could be classified as conservative banking. * * * In a time of general business embarrassment such a system of extended loaning might be attended with peril. There is no better established principle of law than that corporations can only lawfully exercise such powers as are specifically conferred upon them by their charters and such powers as are necessarily incidental to those granted. It has been decided by the courts that the incidental powers granted to national banks are not the incidental powers given generally to all banking institutions, but only such as are incidental to banks allowed to do such things as are prescribed by the statute, and that while a national bank has power to lend money upon personal security it has no power or authority to lend its credit.

See the case of J. & W. Seligman & Co. *v.* Charlottsville National Bank [and] of Johnston Bros. & Co. *v.* same bank, tried before the United States circuit court for the western district of Virginia during the fall term of 1878. The decision of the court will be found in the

December, 1879, number of the American Bankers' Magazine,
43 pages 465–469. The practice described by the examiner is irregular, and you are notified that it

Must be at once discontinued.

The amount of rediscounted paper reported—$416,312.57—is very large, and shows that the business of the association is too much extended. While the right of national banks in emergencies to obtain money by the rediscount of paper cannot be denied, they should not habitually do so, and it is hoped that the operations of your association will hereafter be confined to the use of the means legitimately at its command.

In this connection attention is called to the provisions of sec. 5202, United States Revised Statutes.

The examiner states that he criticised a large loan to ——, being fully satisfied that the security thereof, merchandise, could not be held under the paper in possession of the bank, and that he was assured that the matter would receive immediate attention. It should be properly arranged if it has not been before attended to.

Please let me hear fully from you in reply to this letter at an early day, and inform me what action will be taken with reference to the various matters herein brought to your notice.

Very respectfully,

(Signed) JNO. J. KNOX,
*Comptroller.*

To the directors of the Pacific National Bank, Boston, Mass.

This communication, together with the answer, was evidently read, in whole or in part, to the members of the board who were present at a subsequent meeting, Feb. 25. The following is a copy of the letter sent by the president

In reply:

FEB. 24, 1881.

Hon. John Jay Knox, Comptroller of the Currency, Washington, D. C.

SIR: Your letter of the 19th inst., with comments on report of Examiner Needham, is received and has our attention. We beg to reply to them *seriatim*. The clearing-house gold certificates reported as counted by us in reserve have been, for reasons disconnected with the permission or requirement of the law, largely converted into coin, and the balance will be. We were aware that the clause of the law underscored by you would, technically, not permit us to hold such a reserve, but have felt that we were complying with the spirit of the law, and so exempt from censure. We daily receive and pay large amounts in our dealings with other banks, and
44 so have adopted these certificates for the same reason that the other banks did, to save the risk and inconvenience incident to an almost continuous handling of coin. We will be excused for suggesting, also, as our exclusion from the clearing-house association is

purely the result of the malevolence of two or three men, who are, for the time being, in an official position, and in opposition to the wish of a considerable majority of that body, that it is unjust to us that a technical construction of the law should be made to bear upon us in a way never contemplated by the framers of the law. —— loans have been materially reduced, and before this reaches you will be still more so, and in a short time will be entirely paid.

The amount to the credit of certificates of deposit is made up mostly of amounts deposited by individuals, firms, and corporations, who, having no regular account with us, preferred to receive our certificates in place of a pass-book showing the transaction. The amount held by the * * * was so placed by mutual agreement between * * * and the writer, believing this to be

A more legitimate way

than that usually adopted, of one bank drawing upon another, and so making it appear as a bank deposit, which it really was not. We were confirmed in the propriety of this mode by the fact that it is the one in vogue by the New York banks.

In regard to "loaning our credit," we have to say that never in a single instance has any stipulation been made by us in regard to any certificate issued to any party. They are issued in regular form, and are payable at any moment on presentation. When in any case such certificates have been held it has been by those whose account would not entitle them to loans, and they have taken this mode of making their business of value to the bank.

In regard to rediscounts our position is this: We have a large and active list of depositors, and have, almost continually, more paper offered than we can do. This is well known to quite a number of our banks, who, in consequence of an inactive list of depositors, have more money than paper, and solicit of us a transfer of some of our loan. In a large majority of instances "rediscounts" are not of our seeking. In an experience of thirty years it has seemed to the writer that this is a more conservative method than the one largely in vogue among banks in this city, of borrowing daily, and in some cases oftener, such sums as their neighbors may have to spare for the moment, with a liability to be called on for repayment at a moment's notice. * * * In regard to loan of ——, fresh merchandise has been substituted for that withdrawn, and the loan, which would be considered good without any collateral, is now complete.

45 Permit us to add that in many years of banking experience in this city our views in regard to modes and methods have been fully commented upon, and in consequence have received in some cases ridicule and in many more commendation for our conservatism, which goes to show, to our mind, that conservatism is a relative term, and that which would be considered rashness in some cases and under some circumstances would, under a different condition, be the extreme of conservatism.

I remain, your ob't servant,

(Signed) A. I. BENYON, *Pres't.*

I am assured that this communication, which was interpreted by the members of the board who heard it as a promise that all the evils complained of

Should be at once rectified,

was considered sufficient, and, with a confidence in the light of present developments not easily understood, was accepted as answering all necessary action on the part of the directors, although a proposition to examine the bank by one or more of the directors was subsequently made, which, for reasons at the time given by the president, was abandoned.

On the evening of the 18th of November, after the suspension of the bank, I came into it. I found the bank in great disorder. The books had not been made up for nearly a month, and my first labor was directed to the making up of the books and ascertaining a statement of the condition of the bank from the books.

Having secured this I commenced a careful examination of the assets. In this from the first I have had the hearty and earnest cooperation of the board of directors, many of them, although they have a large business of their own, having devoted their entire time to aid in saving and securing every possible asset.

The cause of the disaster to the bank is easily discovered. It comes from and is alone based upon loaning its credit in various ways and to a remarkable extent.

Its credit has been loaned in five ways, two of which are not unusual.

1st. There have been large rediscounts of paper. The rediscounts on the 31st of January, 1881, at the time of my last examination previous to the suspension, amounted to $416,343.57; at the time of suspension, Nov. 18, 1881, they amounted to $685,579.61, an increase in the nine months and a half of $269,246.04. In rediscounting paper the bank is supposed to secure one great advantage, and that is interest to an extent on a certain amount of funds which it

46 Possesses only in its credit.

For instance, if paper was discounted at eight per centum and rediscounted at six per centum the bank would be the gainer on the line of rediscounts outstanding Nov. 18, 1881, of $13,711. But it must be remembered that the bank takes a liability on the payment of every dollar of its rediscounts.

It is generally inferred that the rediscounted paper of any bank is among the best and most legitimate business paper, and the indorsement of the bank rediscounting secures it to such an extent that it will pass current at rates of interest much below the best market rates of money on ordinary business paper.

This temptation has unquestionably been one which has resulted in very considerable disaster, a large amount of rediscounted paper already having gone to protest.

The second form in which the credit of the bank has been loaned has been in borrowing money on discounted paper and guaranteeing

the paper. This amount involves the same risk to the bank as the rediscounts, and the gain to the bank by this process is in the same way—loaning at a high or fair rate of interest and borrowing at a reduced rate by guaranteeing the payment of the paper. The amount guaranteed in this way outstanding Nov. 18, 1881, was $200,000.

A third process of loaning the credit of the bank has been to arrange, in case a loan is allowed, that a certain amount shall remain on deposit for a greater or less length of time, thus securing for the bank the same amount of earnings the bank would secure if it had ready money to loan to its customers. This is not a novel feature in banking, but when practised to an abnormal extent involves risks which, as in the case of the bank, is

An item of more or less peril.

A fourth process of loaning the credit of the bank has been by the issuing of certificates of deposits. On the 31st of January, 1881, the certificates outstanding amounted to $931,975.17, and on the 18th of November, when the bank stopped, they aggregated $1,698,916.53. The advantages supposed to be secured by the bank by this process were very great.

Parties taking certificates, with the personal promise to hold them a length of time, could unquestionably get loans, when they would have had no chance of securing loans if the money had been paid directly from the cash. The temptation to make loans by thus securing as available cash the credit of the bank on its certificate was too great to be resisted, and although such loans, had they been good, would have resulted in enormous profits, as they stand in the light to-day, they promised large amounts of poorly-secured paper,
47 upon which greater losses may safely be calculated. Enormous amounts were loaned by this process in the few months immediately preceding the suspension of the bank, and loans of $100,000 at a time, on most questionable, if not absolutely illegal, collateral, and in violation of law, were made in several instances, and this, too, when the bank had no funds to loan.

The fifth process of loaning on credit of the bank, and which brought about a sudden ruin, was the issuing of checks on its Boston and New York correspondents without receiving an equivalent in bankable funds. The practice undoubtedly grew from a small beginning, but

Culminated in an enormous aggregate.

The process was this: The party most largely in interest would send in a memorandum in the morning of such checks on New York or Boston as might be needed for his day's business; then checks would be drawn by the cashier of the Pacific National, under the general direction of the president, and, after being regularly entered, would be given to the party in waiting in exchange for his simple memorandum. These checks would frequently amount to hundreds of thousands of dollars, and how it was that the cashier could pursue this line of illegitimate business for weeks and months and have no

suspicion that there was something wrong it is impossible for me to determine. But such, he assures me, was the fact.

During the entire business hours of the day nothing but an unsigned memorandum represented the hundreds of thousands of dollars which this bank in the morning of each day drew on its correspondents. At the close of business the party receiving this accommodation brought to the bank clearing-house funds to cancel the morning obligations. These New York and Boston funds passed regularly through the clearing house until Aug. 9, 1881, at which time a check of $10,000 was held back. Up to this time it would have been difficult, if not impossible, for the directors to discover any illegitimacy in this proceeding. Clearing-house checks are always supposed to be cash, and up to the ninth day of August, 1881, every clearing-house check was regularly and promptly paid, so that taking the cash at night or in the morning would not necessarily have revealed any abnormal condition. Aug. 19 a check of $50,000 was held back, and on Sept. 3 one of $25,000. Out of this management, although the bank was in daily peril by its thus loaning its credit and its funds, the bank never realized one single dollar of advantage.

When questioned with regard to the matter the only reply which could be obtained was that it was done

To swell the volume of business.

Confidence must begin somewhere. In addition to that re-
48 posed in the president, the directors had a cashier taken from a neighboring bank, of good repute among those who had known him long and well. Upon him they relied for the management of the cash, and to him all these facts should have been known; but he, regarding the president as the supreme power, did not stop to criticise any act which he directed, and, therefore, in his mind no suspicion of illegitimacy entered. On the eighteenth day of November, when the final crash came, the sum total of these checks, against which there was only the name of one man, aggregated $1,262,500.

Thus, in brief, has been recited the history and culmination of this sad catastrophe. The solution of these strange acts can find thus far no sufficient explanation. This is not the time or place for charges or criminations. The disaster is upon us, and the business of the hour is to meet it. There are but two ways: one is to allow the bank to pass into the hands of a receiver, in which case one hundred per centum will unquestionably be demanded of the stockholders to meet the deficit; the other is to vote an assessment of one hundred per centum, nurse the poor and doubtful debts, of which there are approximately $1,500,000, and thus realize the largest amount from the invested assets.

The detail of losses will be given by the counsel of the board of directors, W. J. Best, who has given unremitting labor to the investigation, and upon whose figures full reliance can be placed.

DANIEL NEEDHAM,

*National Bank Examiner in charge of Pacific National Bank.*

*Address of W. J. Best.*

I wish, gentlemen, that we met under pleasanter auspices than those in which we assemble here to-day. It is always an unpleasant task to a man to tell another that disaster has overtaken him. The story, however, must be told by some one. You have had a statement, full and complete, of the transactions which culminated in the suspension of the Pacific National Bank on Nov. 18, 1881. There is nothing to be added to the facts furnished in that regard by Col. Needham. What remains for me to say is simply to tell what there is in this bank with which to meet its liabilities to depositors and creditors. In ascertaining the liabilities it was necessary to have recourse to the books of account. Col. Needham has informed you that the books had not been balanced for a considerable period prior to Nov. 18, 1881. The liabilities, however, have been ascertained with the utmost care, and when I give you the amount I think you may accept it as absolutely correct. As to the assets of the bank, I deemed it unwise to use the books of account. All that I looked to was the notes and bills discounted and such stocks and bonds as were to be found in the vaults. I have handled, I believe, every note in the
49 bank, have examined it both as to its form and value, and have taken such measures as were possible, and seemed to me necessary, to ascertain its actual value, a reasonable time being allowed to convert the assets.

The nominal value of the assets, divested of every questionable item, is $5,764,613.47, and the actual appraised value $5,049,758.82. I have reached these conclusions after blotting out more than $750,000 of claims against one man in this city, and treating as an asset only the sum which we know will be paid in probably to-day, but certainly within the next forty-eight hours.

The liabilities consist of three classes. First, there is a liability upon circulation; second, to depositors and creditors, which includes open accounts, demand certificates, rediscounts, and loans by banks and bankers to the Pacific. The whole amount of the liabilities under the second head is $5,154,592.21; the liability to stockholders is $961,300, and upon circulation $450,000, making a total of $6,565,892.21. Deducting the estimated value of the assets from the liabilities, we find an

Apparent deficiency

of $1,516,133.39. I say "apparent" because a very considerable portion of the sum named we can offset by exchanging securities and discounted paper, classed by us as "doubtful," and which do not appear in the estimated value of the estate of the bank, for demand certificates and cashier's checks now outstanding. I have traced many of these transactions, I think a majority of them, and have come to the conclusion that we may safely assume to exchange the doubtful assets for the obligations of the bank, about $370,000, which would go to reduce the deficiency. As to the remainder of that deficiency, I have proposed to the directors that it shall be met by first levying, voluntarily, upon the stock an assessment of one hundred per

cent.; second, by their either putting in cash or good security for $150,000, in addition to the assessment upon the stock which they hold. This sum of $150,000 is to be repaid out of the remainder of the doubtful assets as soon as collected, and, if not collected, then they (the directors) will have put in $150,000 of their own funds to enable the bank to resume upon a sound financial basis. There is also a credit of some $35,000 as margins upon loans standing in the name of individuals through whom the late management of this bank borrowed money, the collateral of the bank being pledged as security for its payment. These loans could have been retired long since with funds collected since the date of suspension, but no transaction of that nature could be permitted by the national bank examiner. As soon, however, as the bank resumes there can be put into its treasury from $35,000 to $40,000, which stands in the form in which I have just stated.

50 Independently of the assets, which we consider doubtful, there is about $750,000 of a claim, as already intimated, which we take no notice of whatever, and which some of the best-informed men in Boston say is likely to yield a very considerable amount to the bank. The person concerned says it will all be paid as soon as he can get on his feet and be able to

Readjust his own affairs

and control his estate. There is in it sufficient to pay his entire indebtedness. But that is a mere promise, and would not serve as a basis to determine the amount of money necessary to be put into this bank to enable it to resume.

After the most careful and painstaking examination of all the bank's affairs, and having, as already explained, examined the accounts themselves, rather than take the record from the books, I have come to the conclusion that, with the assessment which it is proposed by the Comptroller of the Currency you shall to-day order upon the stock of the bank, and the guarantee fund to be furnished by the directors, there is for this bank a very bright future. Of course much depends upon the management, and that it will be proper and correct I do not doubt. During the eight weeks I have been here my efforts have been seconded most earnestly, literally day and night, by the directors, and the work which they have done in connection with myself has, to my certain knowledge, strengthened the assets of the bank to the extent of more than $500,000, as compared with their condition on the night of the 18th of November, 1881; that is to say, promises of individuals and corporations to which there is no collateral, the promise being of little or no value, have been strengthened by guarantees or indorsements, or by the putting in of good collateral, in the sum of $500,000. There are other ways in which the directors have greatly improved the condition of the bank; and if their plans should meet with your approval, as they have had the hearty approval and indorsement of the Comptroller of the Currency, I repeat the remark of a minute ago, that I see no reason why this bank may not in a short time resume business in a condition which can hardly fail to make the

assessment now necessary to that end not only a safe and profitable investment, but insure beyond a peradventure a realization of perhaps 25, and maybe 50, cents on $1 of the money which has now passed beyond your control, and a dollar of which it would be impossible for you ever to get back were the bank to pass into the hands of a receiver.

In this connection, as an evidence to you that everything has been done, thus far, that was possible

51 To secure the interests

not only of the depositors and creditors, but also of the stockholders, I should state that there has been placed in my name as trustee for the Pacific Bank real and personal property which recently stood in the name of Mr. Benyon and members of his family, worth in cash, I think, $100,000. This, of course, will go as soon as it can be realized upon to help make good this great breach in your assets. I believe there are other properties, of what amount I have no knowledge at present, that we may get in the same way from persons who have had dealings with the bank, but the claims against whom we have written off now, it seeming unwise to regard them as worth anything.

There is nothing further, gentlemen, that I wish to say to you, but I shall try to answer any question you may desire to ask. I show you now (lifting a large pile of statements) the result of my investigation—the notes that I have made—and I can assure you that everything that is in this bank has been thoroughly sifted.

Queries.

A STOCKHOLDER: Do you know how the bank stood when the directors voted to double its capital?

Mr. BEST: I am not able to answer that question. I had no connection with the bank until about the 28th of November, ten days after the failure. My only relation previous to that time was that of its largest depositor. The money now here in my own name and in the name of a corporation of which I am president amounts to about $260,000 or $270,000.

Q. Over what period does this indebtedness run?

Mr. BEST: I think some losses of the bank originated in transactions made several months previous to the vote for increasing the stock. But the transactions have been fully described by Col. Needham. They were carried not upon the books of the bank, but in the head of its president and in the memorandum which the cashier himself kept. There is not an entry upon any of the books of the association of $1,262,500 indebtedness which stood in the name of one of its debtors on Nov. 18.

Q. But in the paper which the bank held, in your examination, of course, you had to see the date upon that paper, and you know, consequently, about what dates or for what dates the bank took that paper. Have you any doubt that this bank was insolvent at the time it voted for the increase of its capital stock?

Mr. BEST: That is a question I cannot answer. I have only addressed myself to ascertaining the bank's condition on the 18th of November.

52 Q. That question has not, then, been looked into by you at all?

Mr. BEST: No, sir; I have only addressed myself to the one date, Nov. 18.

ANOTHER STOCKHOLDER: I understand many small stockholders are not able to meet this assessment. What is to become of them?

Mr. BEST: I am at a loss to know how to answer that question. I am not, myself, a stockholder, but should the bank go on I am likely to be. The law prescribes that when an assessment is ordered three months shall be given within which to make payment. If payment shall not be made then the law provides that a notice of thirty days shall be given, and, unless payment be made at the expiration of that time, the stock would then be sold. I think, however, there are but few who will not be able to take care of the assessment, and I am hopeful—my hope being based upon such knowledge as I have been able to glean by my labors here—that before any of these small holders could be sold out the affairs of the bank will be in such condition that they can themselves raise the money for the assessment without difficulty.

Q. I desire to know whether the cashier has not given a bond, and, if so, for how much, and whether his securities are good.

Mr. BEST: It was intended that the cashier should have given a bond (laughter), and I have reason to believe that a bond was drawn and that the directors were of the opinion that it was executed; but, since the suspension, it has been found that the bond was not executed. The cashier, therefore, cannot be held responsible in any sum whatever on that account.

Q. What provisions are there in the organization of the bank under the original charter or articles of association for an increase in its capital?

Mr. BEST: Perhaps it would be better for the counsel of the bank to answer that question, as I am only a merchant. The articles of association must conform to the law, and the law, I believe, is explicit upon that point. The counsel of the bank, Mr. Stone, could make that matter much plainer than myself.

A stockholder called for the reading of the provision of the articles of association

For increasing the capital stock,

and Mr. Stone, the counsel for the directors, read from the fifth article that the capital should be $250,000, but may be increased, according to the provisions of sec. 5142 of the Revised Statutes, to any sum not exceeding $1,000,000; also sec. 11 of the by-laws, providing that whenever an increase of the stock shall be determined upon the directors shall notify all the stockholders, cause a subscription book to be opened, and, if any stockholder fails to subscribe

53 the directors shall determine what disposition shall be made of the remaining new stock unsubscribed for, and from the di-

rectors' records to show that $461,300 of new stock was subscribed for, represented either by certificates of stock actually issued or in receipts, on the surrender of which the parties who took them are entitled to their certificates, and the remaining $38,700 unsubscribed was canceled; that the Comptroller of the Currency was notified and had issued his certificate that the increase of capital stock had been made according to law, which paper was read by Mr. Stone.

The call of the comptroller for an assessment of one hundred per cent. on the capital stock was read, and the following was offered:

Voted, In accordance with the notice of the Comptroller of the Currency, dated Dec. 16, 1881, there be, and hereby is, laid an assessment of one hundred per cent. upon the shareholders of the Pacific National Bank, of Boston, Mass., *pro rata* for the amount of capital stock of said bank held by each shareholder.

Voted, That the board of directors notify each shareholder of said assessment and collect the same forthwith.

J. H. Benton, Jr., called for a stock vote upon the question.

A running discussion

ensued upon the expediency of passing the vote. Mr. McIntire, of East Cambridge, holding two shares, said it was a legal question whether the old stockholders could be assessed under the call. He wanted action postponed and a committee appointed to examine the accounts and report. He wanted to know whether the bank was solvent when he was induced to buy his stock. Later, when the roll was being taken, Mr. McIntire retired from the room, protesting against and declining to take part in the proceedings.

Mr. Hodges also thought the question should be settled whether the old stockholders could be assessed, and favored postponement.

Mr. Dole spoke in the same vein.

Several gentlemen spoke in favor of immediate action, among them J. F. C. Hyde, of Newton; Col. Alden, Capt. Watts, of Maine, and Henry D. Hyde, all agreeing that the only thing to be done was to vote and order the assessment, as the beast means of getting out of the difficulty and saving what they had invested.

In reply to the objections of Messrs. McIntire and Hodges, Mr. Stone stated that the assessment had been ordered by the comptroller under the best authority at Washington, and its legality would have to be settled in the courts.

There were loud calls for "question," and some impatience manifested at the delay.

The stock vote was ordered, and the chair appointed J. H. Benton, Jr., Capt. Watts, Richard Stone, Jr., J. F. C. Hyde, and Dwight Chester a committee to collect and count votes. The ballot proceeded.

54 The assessment ordered.

The question of ordering the one hundred per cent. assessment

upon all outstanding stock was carried by a practically unanimous vote.

The total vote represented some $600,000, out of which only about $10,000 was opposed to ordering the assessment.

Directors elected.

The following directors were chosen by a stock vote of 4,727 shares against eighty scattering votes:

Lewis Coleman, of Boston; John Shepard, of Boston; M. Dyer, Jr., of Boston; M. P. Springer, of Newton; J. H. Whitaker, of Malden; Edwin Ray, of Newton; J. H. Sanborn, of Newton; E. M. Fowle, of Newton; George H. March, of Watertown; Arthur Sewall, of Bath; John E. Cassidy, of Boston; John Fallon, of Lawrence.

Present condition of the bank.

The following statement of the bank's condition Jan. 10, 1882, was submitted:

| | Par value. | Estimated value. |
|---|---|---|
| Cash | $12,743 68 | $12,743 68 |
| U. S. bonds to secure circulation | 500,000 00 | 500,000 00 |
| Redemption fund | 13,500 00 | 13,500 00 |
| From banks and bankers | 196,049 93 | 196,049 93 |
| Bonds, mortgages, and stocks | 273,500 00 | 249,000 00 |
| Pledged to International Trust Company on account of $200,000 loan, not included under any other head | 50,000 00 | 50,000 00 |
| Cashier's account and cash items | 145,038 90 | 93,250 49 |
| Receiving teller's items | 57,743 02 | 49,558 22 |
| Notes and bills discounted, etc., including real estate mortgages and stocks carried as loans | 4,353,538 40 | 3,739,656 50 |
| Overdrafts | 26,539 55 | 10,000 00 |
| Revenue stamps | 1,000 00 | 1,000 00 |
| T. C. Weeks, cash | 135,000 00 | 135,000 00 |
| Difference between estimated and par value | | 714,894 65 |
| | $5,764,653 47 | $5,764,653 47 |
| Circulation | | 450,000 00 |
| 55 Deposits and creditors: | | |
| A—Deposits subject to check | $1,060,615 10 | |
| B—Certificates of deposit | 1,728,762 53 | |
| C—Due banks and bankers | 1,679,189 97 | |
| D—Rediscounts | 685,589 61 | |
| E—Unpaid dividends | 435 00 | |
| | | $5,154,592 21 |
| Stockholders | | 961,300 00 |
| | | $6,565,892 21 |

Recapitulation:

| | Par value. | Estimated value. |
|---|---|---|
| Assets—Estimated value, as above | -------- | $5,049,758 82 |
| Liabilities | -------- | 6,565,892 21 |
| Apparent deficiency | | $1,516,133 39 |
| Margin on loans in names of individuals | $25,000 00 | |
| Premium on U. S. bonds, about | 10,000 00 | |
| Assessment | 961,300 00 | |
| Directors' guarantee fund | 150,000 00 | |
| Doubtful assets ($714,894.65) | 369,833 39 | |
| | | $1,516,133 39 |

The committee appointed to receive, sort, count, and report the votes cast upon the motion to adopt the resolution offered by Richard Stone, Jr., providing for an assessment upon the capital stock, have attended to that duty, and report as follows, viz: Whole number of votes cast, 5,549, representing 5,549 shares, of which 5,494 are in the affirmative and 55 in the negative.

(Signed) J. H. BENTON, JR.
DWIGHT CHESTER.
RICHARD STONE, JR.
SAMUEL WATTS.
JAMES F. C. HYDE.

Adjourned.

J. H. WHITAKER, *Secretary.*

56 EXHIBIT 10.

*Record of Directors' Meeting.*

SATURDAY, *Nov.* 19, 1881.

Present: Messrs. Benyon, Coleman, Sewall, Sanborn, Springer, Shepard, March, Whitaker and Fowle.

Voted, That Col. Needham be requested to make a thorough examination of the bank, and report to the directors.

Voted, That Messrs. Coleman, Shepard, and Whitaker be an executive committee to aid the bank examiner in the examination of the security of the bank, with full power.

Attest: J. M. PETTENGILL, *Cashier.*

EXHIBIT 11.

*Letter, Bank Examiner to Comptroller, Nov.* 26, 1881.

OFFICE OF DANIEL NEEDHAM, NATIONAL BANK EXAMINER,
45 MILK STREET, BOSTON, *Nov.* 26, 1881.

SIR: I have made a statement to the directors of the Pacific National Bank of Boston this afternoon. All the directors but one were present.

They have taken the matter of my statement under consideration, and are anxious for a delay of a week, and have telegraphed to the comptroller asking delay in his final decision.

My report to the Department will be made up at the earliest moment, but I fear it cannot be completed before Monday evening or Tuesday forenoon of next week.

I do not think my investigation of yesterday and to-day has made the matter more hopeful. The directors, however, are very hopeful, and I hope they may have full opportunity for deliberation.

I was in error in my statement that Mr. Weeks was not using checks of the Pacific one year ago, or at the time of my last examination. I made the statement from the testimony of Benyon, the president, which was confirmed by Weeks; they, however, stated from memory. I find by examination of the stub-books that Weeks was using Pacific National Bank checks at the time of my last examination and for some two months previously, but in comparatively small amounts; and the checks which were in at the time of my examination were all apparently regular clearing checks and
57 passed regularly and in amount not sufficient to attract any attention. At that time Mr. Weeks was unquestionably solvent, and continued so for several months afterwards; and the first clearing check which came back to the Pacific was the 9th of August, 1881, for the sum of ten thousand dollars.

I shall give full details of transactions and minute account of the condition of the bank in my report.

Very respectfully, y'r ob't s'v't,

DANIEL NEEDHAM.

Hon. John Jay Knox, Comptroller of the Currency, Washington, D. C.

EXHIBIT 12.

*Report of Bank Examiner to Comptroller, March* 11, 1882.

No. of bank, 2373.

Examiner's report of the condition of the Pacific "National Bank," located at Boston, in the county of Suffolk, State of Massachusetts, at 9 o'clock a. m., March 11th, 1882.

Lewis Coleman, president; E. C. Whitney, cashier.

Resources:

| | Dollars. | Cts. |
|---|---|---|
| 1. Notes and bills discounted | $2,436,962 | 64 |
| 2. Overdrafts | 2,184 | 89 |
| 3. U. S. bonds to secure circulation | 500,000 | |
| 4. U. S. bonds to secure deposits | | |
| 5. U. S. bonds on hand | | |
| 6. Other stocks, bonds, and mortgages | 664,672 | 46 |
| Temporary or demand loan | 702,854 | 06 |
| 7. Due from app'd reserve agents, viz. | 845,202 | 12 |
| Suspense account due on assessment | 354,300 | |
| 8. Due from other national banks | 36,545 | 74 |

| | | Dollars. | Cts. |
|---|---|---|---|
| 9. | Due from State banks and bankers | | |
| 10. | Banking house | | |
| 11. | Other real estate | 335,041 | 88 |
| 12. | Furniture and fixtures | | |
| | 13. Current expenses | | |
| 58 | 14. Taxes paid | | |
| | 15. Premiums paid | | |
| | Revenue stamps | 961 | 93 |
| 16. | Checks and other cash items | 91,141 | 80 |
| 17. | Exch's for C. H., includ'g gold ch'ks | | |
| 18. | Bills of other national banks | | |
| 19. | Bills of State banks | | |
| 20. | Fractional currency (includi'g nickles) | | |
| 21. | Specie, viz.: | | |
| | Silver coin | 3,049 | 68 |
| | Gold coin | | |
| | Rec. teller | 3,876 | 62 |
| 22. | Legal-tender notes | | |
| 23. | U. S. cert's of dep. for legal tenders | | |
| 24. | 5 p. c. red'n fund with Treas. U. S. | 22,500 | |
| 25. | Other funds with Treas. U. S. | | |
| | Cash | | |
| | Total | 5,999,293 | 82 |

Liabilities:

| | | | | |
|---|---|---|---|---|
| 1. | Capital stock paid in | | 354,300 | |
| | Do. assessment | | 607,000 | |
| 2. | Surplus fund | | 300,000 | |
| 3. | Discount | | | |
| 4. | Exchange | | | |
| 5. | Interest | | | |
| 6. | Premiums | | | |
| 7. | Profit and loss | | 18,291 | 44 |
| | Suspense Poland | | 9,800 | |
| 8. | Circulation received | $450,000 | | |
| | On hand and returned | 43,400 | | |
| | | | 406,600 | |
| 9. | State bank circulation outstanding | | | |
| | Suspense certificates | | 367,483 | 34 |
| | 10. Dividends unpaid | | 435 | |
| 59 | 11. Individual deposits, viz: | | | |
| | Subject to check | | 986,380 | 67 |
| | Demand certif's | | 1,108,458 | 28 |
| | Time certificates | | | |
| | Certified checks | | | |
| | Cashier's checks | | | |
| 12. | United States deposits | | | |
| 13. | Deposits of U. S. disbursing officers | | | |
| 14. | Due to national banks | | 929,817 | 51 |

| | Dollars. | Cts. |
|---|---|---|
| 15. Due to State banks and bankers | | |
| 16. Notes and bills rediscounted | 382,895 | 99 |
| 17. Bills payable | 509,701 | 32 |
| Cash over | 18,130 | 27 |
| Total | $5,999,293 | 82 |

*Dividends and Surplus.*

(Section 5199 of the Revised Statutes of the U. S.)

Date of last dividend, July 1, '81; amount, $15,000; carried to surplus, $14,239.48.

*Loans and Discounts.*

| | | |
|---|---|---|
| On paper with two or more individual or firm names | $1,733,836 | 98 |
| On single-name paper (one person or firm) without other security | 162,770 | 85 |
| On mortgages and other real estate security | | |
| On U. S. bonds, payable on demand | | |
| On other stocks, bonds, etc., payable on demand | 762,708 | 88 |
| All other loans | 480,499 | 99 |

Included in the above are—

| | | |
|---|---|---|
| Bad debts, as defined in section 5204 of the Revised Statutes of the U. S. | 3,612 | 84 |
| Other suspended and overdue paper | 777,619 | 84 |
| Liabilities of directors (individual and firm) as payers | 101,607 | 33 |

60 Loans exceeding the limit prescribed by section 5200 of the Revised Statutes of the U. S., viz:

Consist of two items, to wit:

| | |
|---|---|
| John Steward | $100,000 |
| H. M. Jewett | 100,000 |

*General Remarks.*

Bills payable consist of memoranda given to the Central National Bank, to wit:

$19,701.32, payable six months from January 1st, 1882.

$400,000, payable one year from January 1st, 1882, at four per cent. interest.

$70,000 at the Boston Five-Cent Savings Bank, at five per cent. interest, with bonds as collateral, payable at the option of the bank.

The checks drawn on the Eliot and held by the Central National, aggregating three hundred and fifty thousand dollars, upon one of which T. C. Weeks has paid twenty-five thousand dollars, and which were treated by me in a former report as doubtful, and which I had not expected to come to the bank from the Central National, were accepted through Mr. Weeks, in his settlement, as is fully explained

in my correspondence with the directors, a copy of which is embraced in this report.

Bank accounts all verified in accordance with the requirements of the Department.

Cash items consist of the following, to wit:

| | | |
|---|---|---|
| Fractional bill and currency | | 1 60 |
| Memorandum for interest due from Edward Crane *for interest* | 2,797 | 08 |
| Memorandum for check, W. J. Best | 2,500 | |
| Memorandum checks, E. M. Fowle | 2,875 | 03 |
| Memorandum check, F. E. Bryant | 241 | 73 |
| Cash check, Lewis Coleman | 19,300 | |
| Cash check, Shepard, Norwell & Co. | 19,000 | |
| " " Lewis Coleman | 10,000 | |
| Check on Do. | 968 | 50 |
| 61 " " Pacific Nat'l Bank, W. S. Denney, treas. | 7,000 | |
| Check good on opening, J. V. Fletcher & Co. | 10,000 | |
| Check good on opening, C. E. Morrison | 5,000 | |
| " Cash, Lewis Coleman | 1,000 | |
| " " Do. | 100 | |
| " " Do. | 5,000 | |
| Cash paid on W. P. H. note, Wm. P. Hunt | 5,109 | 17 |
| Bills | 245 | |
| Change | 3 | 69 |
| | 91,141 | 80 |

Memorandum checks are said by the president to be good.

Cash paid on W. P. Hunt's note, 5,109.17, will be carried to loan account, the note having been endorsed by the Pacific National Bank, and the party holding the same having been paid by direction of the president, Mr. Coleman. Check on Pacific by W. S. Denney, treasurer, is drawn against a balance on the books of this bank.

Other stocks, bonds, and mortgages consist of the following items:

| | | | Dates of deed. |
|---|---|---|---|
| Nantasket Company bonds | 113,000 | | |
| Framingham & Lowell R. R. bonds | 4,000 | | |
| Brown, Riley & Co. | 64,000 | | |
| Nantasket Co. stock | 2,000 | | |
| Five Cent Savings Bank { C., B. & Q. bonds. | 100,000 | | |
| Five Cent Savings Bank { Nantasket " | 12,000 | | |
| Home Savings Bank, Marcus note secured by mortgage | 22,759 | 17 | Jan. 25, '81. |
| Nathaniel M. Jewett, mortgage of real estate in Boston | 100,000 | | Oct. 7, '81. |
| Thos. Lord & H. G. Parker, trustee note secured by mortg. of real estate | 58,450 | 52 | Nov. 17, '81. |
| E. M. Fowle, trustee mortgage of land | 4,500 | | |

| | | | Dates of deed. |
|---|---|---|---|
| And houses at O. S. | 1,537 17 | 6,037 77 | May 28, '79. |
| Mortgage of German Lutheran church | | 30,000 | M'c'h 8, '82. |
| 62 Ellenville Gas Light Co. bond, 500 bond | | 400 | |
| Lebanon Spring R. R. Co.'s bond (rece'v. cert'f) | | 15,000 | |
| | | 527,647 46 | |
| Clark Insulated Wire Co., 1,401 sh's, par value $25 | | 35,025 | |
| Danville & Ohio R. R. bonds | | 3,000 | |
| Utah & Pleasant Valley R. R. | | 99,000 | |
| | | 664,672 46 | |

The mortgages hereinabove named have been taken in accordance with the provisions of law to protect the bank against loss by paper held by the bank.

Upon these several securities, if a sale should be forced, there would be a very considerable loss. To this fact in my letter, a copy of which is herein given as a part of this report, I called especial attention to this matter, as I have also to the large sources for loss open in every asset account, and to this the directors in their reply, a copy of which is also given, accept the responsibility.

Suspense account, 367,483.34, consists of thirty-seven certificates of deposit, which the counsel of the bank certifies the bank has a legal defence against, the payment of no valuable consideration having been received therefor and practically in the hands of the original parties to whom they were issued.

Other real estate consists of the following items:

| | Amount. | Date of Deed. |
|---|---|---|
| Deed of land in East Boston | 4,500 | April 4th, 1881. |
| " " Newton | 10,000 | Nov. 8th, 1881. |
| " " from A. A. Marcus | 10,000 | Oct. 21, 1881. |
| " " Taunton Savings B'k | 7,500 | Deed to come. |
| Real estate, Commonwealth avenue | 137,500 | M'ch 11, 1882. |
| Real estate Mystic avenue | 14,276 97 | Feb. 20, 1878. |
| " Winthrop | 2,164 91 | Sept. 1st, 1881. |
| " Whitney property | 15,000 | Deed in transit. |
| " Wm. Bassett " | 1,200 | Ocean Spray. July 25, '79. |
| Real estate, Camden & Tremont Sts. | 14,500 | Dec. 6, 1881. |
| 63 Real estate, Albion, Cliftondale, Purchase Sts. | 18,300 | Jan. 20, M'ch 24, '81. |
| Real estate, Chas. Hurlburt, Dale St. | 5,100 | Apr. 9, 1880. |
| Real estate, Hotel St. Leonard | 45,000 | M'ch 7, 1882. |
| " " Commonwealth Hotel, | 50,000 | " 11, 1882. |
| | 335,041 88 | |

This real estate has all been taken in accordance with the provisions of law to protect the bank against loss by paper taken by the bank.

It is impossible for me to give a valuation to these items. The directors are confident that upon the real estate there will be but little if any loss.

Paper classified "Bad debts," $3,612.84, consists of several items, which should be charged off.

Paper classified "Other suspended and overdue" consists of a large number of items, sixty thousand dollars of which has been overdue the second time. About this paper, as well as about the other paper of the bank, I have little knowledge except that which I obtain from members of the board.

As will be seen by my letter to the board of directors, which is made a part of this report, I have called especial attention to each classification of assets upon which the bank is to rely for rehabilitation, and, as will be seen by the reply of the board of directors, which reply is also made a part of this report, the directors accept the responsibility of again opening the doors of the bank for business.

Before concluding my examination of this bank I addressed a letter to the board of directors, of which the following is a copy:

To the directors of the Pacific National Bank:

GENTLEMEN: You are in session to consider the most important matter connected with your varied, arduous, and continuous labor for the last four months, the summing up of your work and its results. Upon your action to-day must rest largely the reopening of the bank, or the passing of its assets into the hands of a receiver.

You have worked assiduously and continuously, some of you, men of very large and active business, having entirely neglected your own personal matters and given your whole time to the affairs of the bank.

To-day the question is put to you, Is the bank now solvent?
64 Can it be rehabilitated and placed with the other solvent banking institutions of Boston and enter safely into the legitimate competition for a legitimate business and have the result crowned with success?

You have directly or indirectly scanned every piece of paper and every item of bond, mortgage, and real estate which enters into the great total of the bank's assets. You have renewed much of the overdue paper, taken new or additional security, and examined the large volume of "overdue" paper, item by item. You have in almost every instance had the debtor in your presence, conversed with him freely, interrogated him with regard to his means, and reached a conclusion, as I understand, in every case which has been made a matter of record.

Personally, I have called your attention many times during the last four months to the enormous acknowledged liabilities of the bank, and again, in this closing communication, I ask you to weigh fully the certainty of the liabilities and the uncertainty of assets,

which depend upon human life, a varied market, and a healthy and successful business future. I must remind you of the large item of paper classified "overdue," aggregating seven hundred and eighty-one thousand dollars, some sixty-eight thousand dollars of which has been of the renewed paper previously overdue, and now overdue for the second time. I must remind you of the "other stocks, bonds, and mortgages," aggregating more than six hundred thousand dollars, most of which could not find a ready market at prices very considerably below the individual and aggregate values at which they stand in the bank's assets.

I must remind you of the time and demand loan, constituting the great bulk of assets—the backbone of the bank—out of which you are to largely meet the liabilities which you assume of payments on call, and in four, eight, and twelve months, from January 1st, 1882.

I must remind you of the real estate depending for its disposition upon a variable market.

I must remind you that some three hundred and fifty-four thousand three hundred dollars of the assessment to make good lost capital has not yet been paid in.

I must also call to mind the swelling of the liabilities some three hundred and twenty-five thousand dollars by the recognition of the two checks held by the Central National Bank, to wit, one of two hundred thousand dollars and one of one hundred and fifty thousand, drawn Sept. 6th and 8th, 1881, on the Eliot National Bank, and which did not appear upon the books of the Pacific National charged in the Eliot National Bank account.

I am aware that the outstanding checks are *prima facie* evidence of the indebtedness of the bank, and I am also aware that they were grouped with checks recognized in all hands as *bona fide* indebtedness of the Pacific National in a final adjustment of the unsecured checks held by the Pacific National against T. C. Weeks, who, otherwise, by this settlement, seemed powerless to contribute anything in liquidation of his debt.

With this review of the principal features of the bank's assets and this reminder of the weak and doubtful features of the condition of the bank, I ask your careful and mature action, keeping constantly in mind your duties to the creditors and stockholders of the bank and the great public, who will, of right, discuss the result of your action.

Very respectfully, DANIEL NEEDHAM,
*Nat'l Bank Examiner.*

To which the directors returned a reply, of which the following is a copy:

BOSTON, *March 11th*, 1882.

To Daniel Needham, Esq., national bank examiner.

SIR: Your letter of this date has been read and carefully considered by the board of directors of the bank. We have, as you say, either directly or indirectly, scrutinized every item of assets held by the bank. We have, directly or indirectly, met most of the debtors

of this bank face to face, and have formed an opinion of the character and responsibility of the men. We have weighed carefully the great aggregate of liabilities, and are impressed with the responsibility we assume when we decide that the doors of the bank can again be opened for business and its obligations met as they have been arranged with a very large proportion of the creditors. It has been by careful consideration that the liability of the bank on the two checks held by the Central National Bank, aggregating three hundred and fifty thousand dollars, upon which T. C. Weeks had paid twenty-five thousand dollars, have been recognized in the settlement of T. C. Weeks as a part of the seven hundred and five thousand dollars which he has paid on his unsecured checks held by the bank, the settlement being the best that could be made, and removing from the bank a liability hereafter to be contested in the courts, involving large expense and uncertain results at the best.

In view of all the facts in the case, and of our most careful and protracted examinations, we decide that the assets of the bank are fully equal to its liabilities, and are not only willing but desirous of taking the responsibility which the reopening of the bank's doors for business imposes upon us.

In behalf of the board:

Respectfully,

LEWIS COLEMAN, *Pres't.*
DANIEL NEEDHAM,
*Examiner.*

To the Comptroller of the Currency, Washington, D. C.

66 EXHIBIT 13.

*Letter, W. J. Best to Comptroller, March* 14, 1882.

WASHINGTON, D. C., *March* 13, 1882.

Hon. John Jay Knox, comptroller, etc.

SIR: Referring to our interview of yesterday, concerning the Pacific National Bank, I beg to submit a brief statement as to certain assets, of the value of which you desired more particular information than had been furnished by Col. Needham, national bank examiner.

Under the head of "other stocks and bonds and mortgages," the bank holds—

| | |
|---|---|
| Nantasket company bonds | 125,000 |
| Nantasket company stock | 64,000 |
| Utah & P. V. R. R. bonds | 99,000 |

These items aggregate $228,000, and are now worth only about 75 % of their face value; but, as an asset, I feel justified in saying that they are worth par. The transactions through which they came into the bank are well known, and I have excellent reasons for stating that the persons who placed them in the bank can be compelled and will shortly find it to their interest to take them out again at the cost price of $288,000.

The bonds of the Framingham and Lowell R. R., the Danville &

Ohio River R. R., the C., B. & Q. R. R., and the Lebanon Springs R. R. receiver's certificates, together amounting to $122,000, are good, interest-paying securities, which could readily be sold at 85 %, even in the present depressed state of all railroad stocks. They cost the bank par, and, in the opinion of persons well informed, will ere long sell at that price, or even higher.

Of the Clark Insulated Wire Co. stock, $35,025, I know but little. A gentleman largely interested in the company informs me that its stock has a prospective value far beyond the sum named. Mr. Coleman and, I think, others connected with the bank, own some of this stock. That held by the bank was taken in part settlement of the indebtedness of an insolvent corporation.

67 The "bonds and mortgages" foot up $217,247.46, and on this large sum the loss will probably not exceed $1,500, which may be sustained on the $6,037.77 mortgage in the name of E. M. Fowle, trustee. The item of $22,759.17 will be offset by an equal amount in our own demand certificates, now held by the Home Savings Bank. This settlement was arranged previous to my leaving Boston last Saturday. The rest of the list are amply secured, and will doubtless be converted into cash or first-class stocks within a few months.

Of the "real estate" upwards of $60,000 will be exchanged for demand certificates that were issued for properties taken from the Home Savings Bank, the Taunton Savings Bank, A. A. Marcus, and others. The Commonwealth avenue lands, the Commonwealth Hotel, and the estate at Camden and Tremont Sts., aggregating $202,000, are not rated at their full market value. I feel quite certain that they will realize the sum stated, and that they can be disposed of during the spring or early summer. The remainder of the real estate amounts to $71,764.91, on which I anticipate a loss of about $25,000.

As to the "notes and bills discounted," I would say that each piece of paper and everything in the shape of collateral have been gone over several times by the directors, and that they did not hesitate to assume the responsibility put upon them by Col. Needham in the letter which he addressed them on the 11th inst. and made a part of his report. The large amount of "past-due" paper could at any moment be almost wholly blotted out by renewals, but I have earnestly advised against this course, for the reason that the makers and indorsers are not entitled to discounts and should be compelled to pay up at once. A large portion, probably about four-fifths, is secured by collateral or indorsements sufficient to cover the whole amount due the bank.

A fair approximation of the loss upon notes and bills discounted, including the "past due," would be from $150,000 to $250,000. It is probable that the minimum sum named will more than cover the actual loss. Of course careful and intelligent, and at the same time energetic, management is required in dealing with this por-

68 tion of the assets, and you may rest assured that nothing will be left undone to insure the most satisfactory results.

The "surplus fund" and "profit and loss" amount to $318,291.44,

and this sum the directors believe ample to cover every possible loss in realizing upon the estate. In this opinion I fully concur and will do all in my power to make it good.

As evidence of what may be accomplished by good management the tables given below speak for themselves. The work already done entitles the directors to the confidence of the Department and the respect of every one in any way interested in the bank. Beside reducing the liabilities nearly $1,200,000 the assets that remain have been strengthened to the extent of at least $500,000; that is to say, mortgages, stocks, and bonds in the amount named have been brought into the bank as collateral where none was held before.

When the bank suspended it had less than $13,000 in cash; now it has nearly $1,000,000, and the amount is steadily increasing.

The surplus that is shown in the bank examiner's report of the condition of the bank represents mainly properties of various kinds that have been secured since Nov. 18, 1881.

In the settlement with T. C. Weeks the bank released of its claims against him $857,500. Notwithstanding the release, he declares that he can and will yet pay to the last penny, and there are many conservative bankers, capitalists, and merchants in Boston who believe that he will do so.

Once before he failed, got his discharge in bankruptcy, resumed business, made money, and paid his old debts in full. All who know him say he is honest, and he has so impressed me. He is a strange character—bright, clever, and a bold operator; a man whom it is difficult to keep down, much less suppress, and who, I believe, would rather have men say of him that he paid his debts than that he was worth millions. From all that I know of him I think there is a fair prospect that he will ultimately pay a portion, perhaps the whole, of his indebtedness to the bank.

I shall lay a copy of this letter before the directors on my return to Boston, and will have them indorse it or send you a similar letter over their individual signatures; meantime you may treat it
69 as fully authorized under the general powers conferred upon me by the vote passed at their meeting last Saturday, a certified copy of which I herewith file.

I have the honor to remain, etc., respectfully, your ob't serv't,

W. J. BEST.

PACIFIC NATIONAL BANK,
BOSTON, *March* 21, 1832.

According to our best knowledge and belief, we think the within statement is correct.

LEWIS COLEMAN.
JOHN SHEPARD.
GEORGE H. FROST.
JAS. H. WHITAKER.
GEO. N. MARCH.
MICAH DYER, JR.
M. P. SPRINGER.
SAMUEL WATTS.
JOHN FALLON.

| | | |
|---|---|---|
| Nov. 18, 1881: | | |
| Subject to check | | 1,062,540 10 |
| Demand certificates | | 1,728,762 53 |
| Banks and bankers: | | |
| General | 1,815,936 36 | |
| Howard Nat'l Bank | 70,000 00 | |
| 5 C. Savings Bank | 90,000 00 | |
| | | $1,975,936 36 |
| Rediscounts | | 685,589 61 |
| | | $5,452,828 60 |
| March 11, 1882: | | |
| Subject to check | 986,380 67 | |
| Demand certificates | 1,475,941 62 | |
| Banks and bankers | 929,817 51 | |
| Bills payable: | | |
| Cent. Nat'l Bank 419,701 32 | | |
| 5 C. Savings Bank 90,000 00 | | |
| | 509,701 32 | |
| Rediscounts | 382,895 99 | |
| | | 4,284,737 11 |
| Actual reduction in liabilities | | 1,168,091 49 |
| Liabilities as above | | 4,284,737 11 |
| Extensions to March 11 | 2,648,267 00 | |
| Do. likely to be secured before the bank resumes | 153,733 00 | |
| Demand certificates carried to suspense ac. by direction of Col. Needham | 367,483 00 | |
| | | 3,167,483 00 |
| Balance | | 1,117,254 11 |
| Deduct rediscounts, which it is believed will be paid at maturity | | 382,895 99 |
| Amount to be provided on resumption | | $734,358 12 |
| Cash actually available | | 954,259 39 |
| Surplus in cash, after paying every obligation not extended or contested | | 219,901 77 |

EXHIBIT 14.

PACIFIC NATIONAL BANK,
105 DEVONSHIRE STREET, BOSTON, *January 2nd*, 1882.

We, the undersigned, creditors of the Pacific National Bank of Boston, in consideration of the embarrassed condition of said bank and the agreements of the other parties hereto herein contained, do

hereby, for ourselves and our heirs, executors, and administrators, respectfully covenant and agree with said Pacific National Bank of Boston, its successors and assigns, that we will and hereby do extend the time of payment of our several claims as follows, to wit: one-third thereof to be paid in four months from January 1st, 1882; one-third thereof to be paid in eight months from January 1st, 1882; one-third thereof to be paid in twelve months from
71 January 1st, 1882; interest on each instalment to be paid therewith at the rate of four per cent. per annum; the bank to have the right to anticipate any or all of said instalments.

In witness whereof we have hereto set our hands and our common seal, adopted for this purpose only, this second day of January, one thousand eight hundred and eighty-two.

EXHIBIT 15.

THE PACIFIC NATIONAL BANK,
BOSTON, *March* 16, 1882.

To our depositors:

By vote of the directors and the approval of the Comptroller of the Currency the bank will reopen for business on Saturday, the 18th. Every effort has been made to put the bank again into a sound and solvent condition, and the stockholders have been called upon to pay an assessment of 100 per cent. on their stock, thus making the depositors' balances secure and available. The bank will be run on strict business principles and in the interest of its customers and stockholders, and, while thanking you for past favors, we solicit your confidence and support for the future.

LEWIS COLEMAN, *President.*
E. C. WHITNEY, *Cashier.*

EXHIBIT 16.

(2373.)

Lewis Coleman, president. E. C. Whitney, cashier.

THE PACIFIC NATIONAL BANK,
BOSTON, *April* 21, 1882.

No. 105 Devonshire St., directly opposite post office.

—— ——,
—— ——:

In December last a notice was received from the Comptroller of the Currency, of which the following is a copy:

72 TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Dec.* 16, 1881.

To the Pacific National Bank of Boston, Massachusetts:

The entire capital stock of the Pacific National Bank of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand

three hundred ($961,300) dollars, having been lost, notice is hereby given to said bank, under the provisions of section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent. upon its shareholders, *pro rata*, for the amount of capital stock held by each, and that, if such deficiency shall not be paid and said bank shall refuse to go into liquidation, as provided by law, for three months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association, according to the provisions of section 5234 of the Revised Statutes of the United States.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL.] JNO. JAY KNOX,
*Comptroller of the Currency.*

In pursuance of the foregoing notice the following vote was passed at the annual meeting of the stockholders held Jan. 10, 1882:

Voted, In accordance with the notice of the Comptroller of the Currency, dated Dec. 16, 1881, there be, and hereby is, laid an assessment of 100 per cent. upon the shareholders of the Pacific National Bank of Boston, Mass., *pro rata*, for the amount of capital stock of said bank held by each shareholder.

Voted, That the board of directors notify each shareholder of said assessment and collect the same forthwith.

More than three months having elapsed since you were notified of said assessment, and the same not having been paid, you are hereby notified that unless said assessment shall be paid on or before April 28, 1882, notice of the sale of your stock at public auction will be published in a newspaper of the city of Boston and posted in the office of this bank, and your stock will be sold according to law on Wednesday, the thirty-first (31) day of May, 1882.

E. C. WHITNEY, *Cashier.*

73 EXHIBIT 17.

Lewis Coleman, president.

PACIFIC NATIONAL BANK,
105 DEVONSHIRE STREET,
BOSTON, *Jan.* 2, 1882.

A meeting of the directors of the Pacific National Bank was held at their rooms this day, when the following votes were adopted unanimously:

"Voted, That in the opinion of said directors an assessment of 100 per cent. upon the stock of said association will place it upon a sound financial basis, provided depositors and creditors shall agree to a reasonable extension of time for the payment of their several claims.

"Voted, That depositors and creditors be requested to sign the

following agreement, and return the same to the bank on or before the 10th inst."

The agreement (Exhibit 14) referred to in the last vote is herewith enclosed. It is very important that you sign and return it to me as soon as possible. The assets of the bank consist almost wholly of discounted paper, which cannot be realized upon immediately without great sacrifice. It would, therefore, be unwise to attempt to resume at an early date unless the creditors generally agree to the extension now asked. Waiting your reply,

Respectfully, &c., LEWIS COLEMAN, *Pres't.*

74 At the request of the directors of the bank Richard Stone went to Washington in December, 1881, before the vote of the directors, Dec. 13, 1881, was passed, and had an interview with Comptroller Knox in relation to the affairs of the bank. Mr. March, one of the directors, and Mr. William J. Best, their agent and a large creditor, were present and took part in the conversation. The fact that a vote had been passed in September previous to increase the capital to a million dollars and that the full amount of that increase had not been subscribed for or paid in when the bank suspended in November was talked over in that conversation. Stone discussed with the comptroller the question as to what should be done in view of those facts and as to what should be regarded as the capital of the bank, and the conclusion of the matter was that such a vote as that of Dec. 13, 1881, should be passed by the directors; that the comptroller should then be notified that the capital had been increased by the sum which had in fact been paid in, and that he should thereupon issue his certificate of increase to the bank to that
75 amount. He expressed his approval of that course. Said Stone reported to the board of directors his interview with the comptroller, and informed them that the course which was adopted was approved by him before the vote was passed.

The comptroller, before Dec. 13, 1881, was informed that the bank was insolvent, owing at least $961,300 (which was the capital stock) more than the value of its assets.

The defendant is 68 years of age; lives in Thomaston, Me.; is master mariner. He owned twenty shares in the Pacific National Bank before the passage of the vote, Sept. 13, 1881, to increase the capital stock to $1,000,000. After the passage of that vote he received a printed notice from the cashier, a copy of which is Exhibit 4, annexed hereto. He returned the same paper to the bank with an agreement written upon it to take the number of shares of new stock to which he was entitled by the notice; he afterwards bought rights of Benyon to take ten shares more of new stock, making 30 shares in all of the new stock; he paid for 30 shares of new stock, $2,000 Sept. 30, 1881, and $1,000 Oct. 1, 1881, and received the following receipts:

"$2,000. PACIFIC NATIONAL BANK,
"BOSTON, *Sept.* 30, 1881.

"Received of Harvey Mills two thousand dollars on account of subscription to new stock.

"J. M. PETTENGILL, *Cashier.*"

"$1,000. PACIFIC NATIONAL BANK,
"BOSTON, *Oct.* 1, 1881.

"Received of Harvey Mills one thousand dollars on account of subscription to new stock.

"J. M. PETTENGILL, *Cashier.*"

76 In Oct., 1881, he returned the receipts to the bank and received for them certificate No. 857 for thirty shares of the new stock, dated Oct. 1, 1881.

Shortly after Jan'y 10, 1882, he received information that an assessment upon the stockholders of the Pacific Bank of $100 upon each share had been made; he thereupon came to Boston with the money, $5,000.

Before he paid it he had an interview with Mr. Needham, the bank examiner, in which Needham told him he would have to pay the assessment, and that such payment would clear him of all liability for the debts of the bank. He then handed the money to Needham, and after Needham received it he told the defendant that that would clear him of all liability.

The defendant paid the money to keep from being sued, supposing the assessment could be enforced against him by a suit at law, and would not have paid it if he had not then understood that no future assessment could be made upon the stock for the payment of the debts of the bank. He understood that the money he paid was to go towards the payment of the debts.

At the time he paid the $5,000, Jan'y 17, 1882, the defendant did not know that the $500,000 increase of the capital stock which was voted in Sept., 1881, had not all been taken and paid in, and he had not at that time been informed of the action of the directors and the Comptroller of the Currency which took place in Dec., 1881, purporting to fix the capital stock of the Pacific National Bank at $961,300, and he then understood the capital to be $1,000,000.

77 The defendant had no knowledge of what was on the books of the bank respecting his ownership of stock, or whether there was anything there prior to the taking [of] his testimony in this case.

The defendant saw the newspaper notice of the annual meeting held Jan'y 10, 1882, but did not attend the meeting and did nothing about it.

It did not appear that defendant had any knowledge of the action of the directors and the Comptroller of the Currency which took place in Dec., 1881, relating to the increase of the capital stock, before the appointment of the receiver, nor did it appear that he knew before that time that the $500,000 increase was not all taken and paid in.

The defendant retained possession of the said certificates of stock to May 22, 1882. The entries on the stock ledger relating to him are as follows, viz:

On page 24 is the following:

"Harvey Mills, Thomaston, Me.

| | | | | |
|---|---|---|---|---|
| 1877. | | | | |
| Nov. 1. | By 10 shares | | 10 | 1,000 |
| 1880. | | | | |
| Jan. 1. | " 10 | " | 10 | 1,000 |
| 1881. | | | | |
| Oct. 1. | " 30 | " | 30 | 3,000" |

He knew of the suspension of the bank Nov., 1881, and that it had resumed business in March, 1882.

The court found the defendant on May 20, 1882, and May 22, 1882, to be the owner of the number of shares as declared in that behalf in the declaration.

78 *Judgment.* (*September* 8, 1885.)

It is thereupon, to wit, September 8, 1885, considered by the court that the said Linus M. Price, receiver, plaintiff, recover of the said Harvey Mills, defendant, the sum of five thousand eight hundred and thirty dollars and eighty-three cents ($5,830.83) damages and his costs of suit, taxed at ——.

The following bill of exceptions is allowed by the court, and by direction of the court is filed as of September 8, A. D. 1885, before entry of judgment herein, and made a part of the record in this cause.

*Defendant's Bill of Exceptions.* (*Filed as of Sept.* 8, 1885.)

Be it remembered that upon the trial of this action, the record of which is referred to as a part of this bill, the parties having filed a stipulation in writing with the clerk waiving a jury, each party introduced evidence to maintain on his part the issue joined. Whereupon the court found the facts specially, and said finding is incorporated into and — part of the record of this case and is entitled "Statement of Facts Found by the Court;" which statement of facts is made a part of this bill of exceptions.

The defendant objected to the admission of Exhibits 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, and 17, which are annexed to said finding of facts, upon the ground that they are, and each of them is, immaterial and irrelevant to the issue to be tried.

79 The court overruled all these objections and admitted the exhibits; to which rulings in respect to each of said exhibits the defendant then excepted.

He also objected to the admission of Exhibit 9, annexed to said finding, except so much thereof as is a record of the election of a board of directors for said bank, upon the ground that all other matter contained in said exhibit is immaterial and irrelevant to the

issue, and also because it was incompetent for the stockholders to pass any vote or do any business at the meeting of which that exhibit purports to be a record except the election of a board of directors, as the meeting was notified and called for that purpose only; and he specially objected because it was incompetent for said meeting to pass a vote of assessment upon the stockholders of said Pacific National Bank of one hundred per cent. of the amount of its capital stock held by each shareholder, which, by the statement in said exhibit, purports to have been done, and because said exhibit is but hearsay and incompetent evidence of the matters therein recited and set forth (except the election of directors), if the matters themselves were admissible in evidence.

The court overruled all the defendant's objections to said exhibit and its contents, and admitted it in evidence, to which ruling the defendant then excepted.

The defendant objected to the admission of the following vote of the directors of said bank, passed Dec. 13, 1881, viz:

Voted, That whereas it was voted by this board, on the
80 thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1;

And whereas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in:

Voted, That said $38,700 of said stock be, and is hereby, canceled and deducted from said capital stock of $1,000,000 and that the paid-up capital stock of this association amounts to $961,300.

Voted, That the Comptroller of the Currency be notified that the capital stock of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association, according to law, because it was incompetent and illegal for the board of directors of said bank to cancel and deduct $38,700 from its capital stock of $1,000,000, or to vote that the paid-up capital of the association amounted to $961,300, or to do any act which purports to have been done by said vote tending to fix the capital stock of said bank at $961,300, or in any way affecting the status of said capital stock.

And he also objected to the admission of the certificate of J. M. Pettengill, cashier, to the Comptroller of the Currency, which
81 is as follows, viz:

"PACIFIC NATIONAL BANK OF BOSTON,
"*December* 13, 1881.

"To the Comptroller of the Currency, Washington, D. C.:

"It is hereby certified that the capital stock of 'The Pacific National Bank of Boston' has been increased, pursuant to the articles of association of said bank, in the sum of four hundred and sixty-one

thousand three [hundred] dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred [and] sixty one thousand three hundred dollars.

[SEAL.] "J. M. PETTENGILL, *Cashier.*"

Because the vote certified by him was not evidence which the Comptroller of the Currency could legally act upon.

The court overruled said objections and admitted the said vote and certificate; to which rulings the defendant excepted.

The defendant also objected to the admission of the certificate of the Comptroller of the Currency, dated Dec. 16, 1881, which is as follows:

"TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Dec.* 16, 1881.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston, Mass.," has been increased in the sum of four hundren and sixty-one thousand three hundred dollars in accordance with the provisions of its articles of association, and that the
82 whole amount of such increase has been paid in:

Now it is hereby certified that the capital stock of "The Pacific National Bank of Boston, Mass.," aforesaid has been increased as aforesaid in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature.

[SEAL.] JOHN J. KNOX, *Comptroller.*"

Because the Comptroller of the Currency had no authority in law to issue said certificate upon the vote certified and forwarded to him by said cashier, and said certificate was null and void and had no legal effect upon the amount of the capital stock of said bank and was not competent evidence of an increase thereof of $461,300.

The court overruled said objections and admitted said certificate in evidence; to which ruling the defendant then excepted.

The defendant also objected to the facts introduced by the plaintiff relating to the suits brought by three creditors after March 18 and before March 20, 1882, as stated in the facts found by the court, as irrelevant and immaterial.

The court overruled the objection and admitted the evidence, and defendant then excepted.

83 Upon the findings of fact by it the court found that the defendant was the owner of the number of shares of stock on May 20, 1882, and May 22, 1882, as declared in that behalf in the declaration; to which finding the defendant then excepted.

And after the evidence introduced by both parties was closed the defendant prayed the court to make sixteen rulings in matters of law, which requests are numbered from 1 to 16, inclusive, and are as follows, viz:

(1.) That by reason of defendant's subscription for 30 shares of the $500,000 increase of the capital of the Pacific National Bank voted Sept. 13, 1881, and his payment thereof, and receipt and retention of a certificate of stock for that amount, he cannot be held as a stockholder in this action unless it appears that the whole amount of the $500,000 increase voted, and to which he subscribed, was, either before or subsequent to his reception of his certificate, taken and paid in, and the increase of stock to that amount approved by the Comptroller of the Currency. (Refused.)

(2.) That the vote of the directors of the Pacific National Bank, Sept. 13, 1881, that the capital of that bank be increased to $1,000,000, and the vote of the directors of said bank, Dec. 13, 1881, in which the attempt was made to limit the increase of the capital to $461,300, and to fix the whole capital at $961,300, and the approval thereof by the Comptroller of the Currency by his certificate, dated Dec. 16, 1881, did not constitute a legal and valid increase of the capital stock of said bank to $961,300. (Refused.)

84 (3.) That if the action of the directors of said bank and the Comptroller of the Currency, set forth in the preceding request, constituted a valid increase of the capital stock of said bank of $461,300 and to the amount of $961,300, the defendant cannot be held in this action as a shareholder in said increase of $461,300 by reason of his subscription for thirty shares of the increase of $500,000 voted Sept. 13, 1881, and his payment of such subscription and reception of a certificate for said thirty shares thereof prior to the failure of the bank, Nov. 18, 1881. (Refused.)

(4.) That the retention by the defendant of said certificate for thirty shares of said $500,000 increase until the final closing of the bank, May 20, 1882, and the payment of the assessment of one hundred per cent. upon the par value of said supposed shares which was made by him Jan'y 23, 1882, were not sufficient in this case to constitute or hold him as an owner of said shares if he did not know and had never been informed of the said action of the directors Dec. 13, 1881, or of the said action of the comptroller Dec. 16, 1881, certifying the stock at $961,300, until after the receiver was appointed, May 22, 1882, and did not until after that time know, and had never been informed, that the increase of said capital stock to $1,000,000 voted by the directors Sept. 13, 1881, had not all been taken and paid in. (Refused.)

(5.) That if the votes of the directors of Sept. 13 and Dec. 13, 1881, and the certificate of the comptroller dated Dec. 16, 1881, did

85 not constitute a valid increase of the capital of the bank to $961,300, that attempted increase was not validated by subsequent ratifying acts (if such acts there were) by part only of those who had subscribed for and paid in the $461,300 under the vote to increase to $500,000. (Refused.)

(6.) That the amount of the capital stock could not be increased by ratification to a sum less than $961,300, and, if the defendant did acts which might constitute ratification on his part, it would not make the 30 shares of proposed new stock subscribed and paid for by him legal stock unless all the other subscribers to the amount

which had been approved by the Comptroller of the Currency ($461,300) also ratified the increase. (Refused.)

(7.) That if the bank gave the defendant credit upon the stock ledger for the number of shares of the increased capital of $500,000 voted Sept. 13, 1881, for which he subscribed and paid when he received his certificate therefor, which credit remained upon the ledger until the receiver was appointed, the defendant is not thereby precluded from showing either that that increase was never legally perfected or that he is not, and never became, the legal owner of said supposed shares. (Allowed.)

(8.) That if defendant did not direct the entry of his name upon the stock ledger, and did not know that it was entered there, he cannot be affected by such entry. (Allowed.)

(9.) That the entry of defendant's name upon the stock ledger and the retention of it there by the directors cannot affect his
86 liability in this action if it does not appear that any of the present creditors of the bank knew that his name was entered among the stockholders and gave credit to the bank on that account. (Allowed.)

(10.) That the payment by the defendant Jan'y 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent, and its capital stock lost, and was in the possession and under the control of said Needham, of an amount equal to the par value of all the stock which he owned, or of which he held certificates, which was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief on his part that it would discharge him from his liability under the statute to contribute towards the payment of the debts of the bank a sum equal to the par value of his stock, constituted a satisfaction and discharge of that liability, and proof of it is a good defence to this action. (Refused.)

(11.) That the payment by the defendant Jan'y 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent, and its capital stock lost, and was in the possession and under the control of said Needham, of an amount equal to the par value of all the stock which he owned, or of which he held certificates, which sum was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief that it would discharge him from his liability under the statute to contribute towards the payment of the debts of the bank a sum
87 equal to the par value of his stock, constituted a satisfaction and discharge of his liability for all debts contracted before such payment. (Refused.)

(12.) That if the defendant paid to Daniel Needham, the bank examiner, while he was in charge of the bank, a sum of money equal to the par value of all the shares of stock held by him in said bank, which was applied in payment of the debts, contracts, and engagements of the bank, it constituted a discharge of his liability under the statute and is a defence to this action. (Refused.)

(13.) That if defendant paid the assessment upon all the shares held by him, which was voted at the assemblage of stockholders

Jan'y 10, 1882, to Daniel Needham while he was in possession and control of the bank, and all money received for the payment of its debts, such payment constituted a discharge of the defendant's liability under the statute and is a defence to this action. (Refused.)

(14.) If the defendant, since the failure of the bank in Nov., 1881, has paid one assessment of an amount equal to the par value of the shares of stock owned by him, and such payment did not have the effect of restoring the value of his stock to him in any part, but was devoted to the payment of the debts, contracts, and engagements of the bank, he is discharged from further liability under whatever provision of law that assessment may have been made. (Refused.)

(15.) And the effect would be the same of a payment made under the circumstances stated in the foregoing request if the assessment was made voluntarily by the stockholders upon themselves
88 without reference to any provision of the statute relating to the making of an assessment. (Refused.)

(16.) That if, after he was notified of the assessment referred to in these requests, the defendant received from Daniel Needham, the examiner, while he was in possession of the Pacific National Bank and all its assets, and while the moneys paid in to said bank were paid and received under his supervision and authority, assurances that the payment of that assessment would relieve him from all further liability under the statute to contribute towards the payment of the debts of the bank, and was influenced to pay the assessment by reason of such assurances, and did thereafterwards pay it to said Needham, such payment is a satisfaction of his liability sought to be enforced in this action and is a defence to it. (Refused.)

But the court rejected each and every one of the said sixteen requests of the defendant, except the 7th, 8th, and 9th, which were granted, and refused to make each of the several rulings prayed for by him in his 1st, 2d, 3d, 4th, 5th, 6th, 10th, 11th, 12th, 13th, 14th, 15th, and 16th requests; to which refusal of the court and rejection of said several requests the defendant then excepted.

And after the court had found the facts specially the defendant prayed the court to rule that "Upon the facts found in this case the plaintiff is not entitled to judgment." But the court refused
89 this prayer, and entered judgment for the plaintiff for the sum of $5,830.83, as appears by the record.

To which refusal to rule and entry of judgment the defendant then excepted.

And the defendant, insisting upon all his exceptions aforesaid, they having been duly taken, prayed the court that this his bill of exceptions be signed and sealed by the court, which is accordingly done and made a part of the record.

LE BARON B. COLT, [SEAL.]
*U. S. Circuit Judge.*

A true record.
Attest: JOHN G. STETSON, *Clerk.*

A true copy.
Attest: JOHN G. STETSON, *Clerk.*

90 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Massachusetts District,* } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the record of said circuit court in the cause of Linus M. Price, receiver, plaintiff, *v.* Harvey Mills, defendant, lately determined in said circuit court, and of all proceedings therein.

In testimony whereof I hereunto set my hand and affix the seal of the said circuit court at Boston, in said district, this fifth day of October, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal of the Circuit Court, Massachusetts.]

JOHN G. STETSON, *Clerk.*

91 *Assignment of Errors.*

Supreme Court of the United States. October Term, 1885.

HARVEY MILLS, Defendant, Plaintiff in Error,
*v.*
LINUS M. PRICE, Receiver, Plaintiff, Defendant in Error.

And now, to wit, on the said eighth day of September, A. D. 1885, before the justices of said court, comes the plaintiff in error, said Harvey Mills, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, to wit:

1. There was error in each of the rulings of said court admitting in evidence each one severally of the records, papers, and documents, copies of which are annexed to and a part of the finding of the facts by the court, which finding is incorporated into and is a part of [the] record of this case, and is entitled "Statement of facts found by the court," and which records, papers, and documents are, respectively, Exhibits 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, and 17 in said finding of facts.

2. There was error in the ruling of said court admitting in evidence what was assumed to be a record of the doings of a meeting of the stockholders of said Pacific National Bank, held Jan'y 10, 1882,

92 a copy of which is annexed to said finding of facts by the court as "Exhibit 9," except so much thereof as is a record of the election of a board of directors of said bank, which is as follows:

"The following directors were chosen by a stock vote of 4,727 shares against 80 scattering votes: Lewis Coleman, of Boston; John Shephard, of Boston; M. Dyer, Jr., of Boston; M. P. Springer, of Newton; J. H. Whitaker, of Malden; Edwin Ray, of Newton; J. H. Sanborn, of Newton; E. M. Fowle, of Newton; George H. March,

of Watertown ; Arthur Sewall, of Bath ; John E. Cassidy, of Boston ; John Fallon, of Lawrence."

3. There was error in the ruling of said court admitting in evidence the following vote of the directors of said Pacific National Bank, passed Dec. 13, 1881, to wit:

Voted, That whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1 ;

And whereas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in:

Voted, That said $38,700 of said stock be, and is hereby, canceled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

Voted, That the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300,
and that the whole amount of said increase has been paid in
93 as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association according to law.

4. There was error in the ruling of said court admitting in evidence the following certificate of J. M. Pettengill, the cashier of said bank, to the Comptroller of the Currency, which is dated Dec. 13, 1881, to wit:

"PACIFIC NATIONAL BANK OF BOSTON,
"*December* 13, 1881.

"To the Comptroller of the Currency, Washington, D. C.:

"It is hereby certified that the capital stock of 'The Pacific National Bank of Boston' has been increased, pursuant to the articles of association of said bank, in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred [and] sixty-one thousand three hundred dollars.

[SEAL.] "J. M. PETTENGILL, *Cashier.*"

5. There was error in the ruling of said court admitting in evidence the following certificate of John J. Knox, Comptroller of the Currency, dated Dec. 16, 1881, to wit:

"TREASURY DEPARTMENT,
"OFFICE OF COMPTROLLER OF THE CURRENCY,
"WASHINGTON, *Dec.* 16, 1881.

"Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of 'The Pacific
94 National Bank of Boston,' Mass., has been increased in the sum of four hundred and sixty-one thousand three hundred dollars, in accordance with the provisions of its articles of association, and that the whole amount of such increase has been paid in :

"Now, it is hereby certified that the capital stock of 'The Pacific National Bank of Boston,' Mass., aforesaid, has been increased as aforesaid in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

"In witness whereof I hereunto affix my official signature.

[SEAL.] "JOHN J. KNOX, *Comptroller.*"

6. There was error in the ruling of said court admitting in evidence the facts introduced by the said Price relating to the suits brought by three creditors after March 18 and before May 20, 1882, as stated in the facts found by the court.

7. There was error in the finding of said court, as a conclusion of law from the facts found by it, that the defendant was the owner of the number of shares of stock in said Pacific National Bank on May 20, 1882, and on May 22, 1882, as declared in that behalf in the declaration.

8. There was error in the ruling of said court in each and every refusal to make the several and separate rulings requested by
95 the defendant in his prayers therefor submitted to the court after the evidence introduced by both parties was closed, to wit:

(1.) In refusing to rule as requested, "that by reason of [the] defendant's subscription for thirty shares of the $500,000 increase of the capital of the Pacific National Bank voted Sept. 13, 1881, and his payment thereof, and receipt and retention of a certificate of stock for that amount, he cannot be held as a stockholder in this action unless it appears that the whole amount of the $500,000 increase voted, and to which he subscribed, was, either before or subsequent to his reception of his certificate, taken and paid in, and the increase of stock to that amount approved by the Comptroller of the Currency."

(2.) In refusing to rule as requested, "that the vote of the directors of the Pacific National Bank, Sept. 13, 1881, that the capital of that bank be increased to $1,000,000, and the vote of the directors of said bank, Dec. 13, 1881, in which the attempt was made to limit the increase of the capital to $461,300, and to fix the whole capital at $961,300, and the approval thereof by the Comptroller of the Currency by his certificate dated Dec. 16, 1881, did not constitute a legal and valid increase of the capital stock of said bank to $961,300."

(3.) In refusing to rule as requested, "that if the action of the directors of said bank and the Comptroller of the Currency, set forth in the preceding request, constituted a valid increase of the capital stock of said bank of $461,300, and to the amount of $961,300, the defendant cannot be held in this action as a stockholder in
96 said increase of $461,300 by reason of his subscription for 30 shares of the increase of $500,000 voted Sept. 13, 1881, and his payment of such subscription and reception of a certificate for said 30 shares thereof prior to the failure of the bank, Nov. 18, 1881."

(4.) In refusing to rule as requested, "that the retention by the defendant of said certificate for 30 shares of said $500,000 increase until the final closing of the bank, May 20, 1882, and the payment of the assessment of one hundred per cent. upon the par value of said supposed shares, which was made by him Jan'y 17, 1882, were not sufficient in this case to constitute or hold him as an owner of said shares if he did not know, and had never been informed, of the said action of the directors Dec. 13, 1881, or of the said action of the comptroller Dec. 16, 1881, certifying the stock at $961,300, until after the receiver was appointed, May 22, 1882, and did not, until after that time, know, and had never been informed, that the increase of said capital stock to $1,000,000 voted by the directors Sept. 13, 1881, had not all been taken and paid in."

(5.) In refusing to rule as requested, "that if the votes of the directors of Sept. 13 and Dec. 13, 1881, and the certificate of the comptroller dated Dec. 16, 1881, did not constitute a valid increase of the capital of the bank to $961,300, that attempted increase was not validated by subsequent ratifying acts (if such acts there were) by part only of those who had subscribed for and paid in the $461,300, under the vote to increase $500,000."

(6.) In refusing to rule as requested, "that the amount of the capital stock could not be increased by ratification to a sum
97 less than $961,300; and if the defendant did acts which might constitute ratification on his part, it would not make the 30 shares of proposed new stock subscribed and paid for by him legal stock unless all the other subscribers to the amount which had been approved by the Comptroller of the Currency ($461,300), also ratified said increase."

(7.) In refusing to rule as requested, "that the payment by the defendant, Jan'y 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent and its capital stock lost and was in the possession and under the control of said Needham, of an amount equal to the par value of the stock which he owned, or of which he held certificates, which was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief that it would discharge him from his liability under the statute to contribute towards the payment of the debts of the bank a sum equal to the par value of his stock, constituted a satisfaction and discharge of that liability and proof of it is a good defence to this action."

(8.) In refusing to rule as requested, "that the payment by the defendant, Jan'y 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent and its capital stock lost and was in the possession and under the control of said Needham, of an amount equal to the par value of all the stock which he owned, or of which he held certificates, which sum was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief that it would discharge him from his liability
98 under the statute to contribute towards the payment of the debts of the bank a sum equal to the par value of his stock,

constituted a satisfaction and discharge of his liability for all debts contracted before such payment."

(9.) In refusing to rule as requested, "that if the defendant paid to Daniel Needham, the bank examiner, while he was in charge of the bank, a sum of money equal to the par value of all the shares of stock held by him in said bank, which was applied in payment of the debts, contracts, and engagements of the bank, it constituted a discharge of his liability under the statute and is a defence to this action."

(10.) In refusing to rule as requested, "that if defendant paid the assessment upon all the shares held by him, which was voted at the assemblage of stockholders, Jan'y 10, 1882, to Daniel Needham, while he was in possession and control of the bank and all moneys received for the payment of its debts, such payment constituted a discharge of the defendant's liability under the statute and is a defence to this action."

(11.) In refusing to rule as requested, "that if the defendant, since the failure of the bank in Nov., 1881, has paid one assessment of an amount equal to the par value of the shares of said stock owned by him, and such payment did not have the effect of restoring the value of his stock to him in any part, but was devoted to the payment of the debts, contracts, and engagements of the bank, he is discharged from further liability, under whatever provision of law that assessment may have been made."

(12.) In refusing to rule as requested, that "the effect would
99 be the same of a payment made under the circumstances stated in the foregoing request if the assessment was made voluntarily by the stockholders upon themselves, without reference to any provision of the statute relating to the making of an assessment."

(13.) In refusing to rule as requested, "that if, after he was notified of the assessment referred to in these requests, the defendant received from Daniel Needham, the examiner, while he was in possession of the Pacific National Bank and all its assets, and while the moneys paid in to said bank were paid and received under his supervision and authority, assurances that the payment of that assessment would relieve him from all further liability under the statute to contribute towards the payment of the debts of the bank, and was influenced to pay the assessment by such assurances, and did thereafterwards pay it to said Needham, such payment is a satisfaction of his liability sought to be enforced in this action and is a defence to it."

9. There was error in the ruling of said court refusing the prayer of the defendant made after the court had found the facts specially, which prayer was as follows, to wit: "That upon the facts found in this case the plaintiff is not entitled to judgment," and in rendering judgment for the plaintiff for the sum of $5,830.83.

10. There was error by said court in rendering judgment against the defendant for an assessment upon all the stock of which he was alleged in the declaration to be owner, because, if judgment was authorized for the assessment upon any part of said alleged
100 stock, it was only upon such stock held by the defendant as was created prior to Sept. 13, 1881.

11. There was error by said court in rendering judgment for any greater part of the assessment made by the Comptroller of the Currency against the defendant than the defendant's due proportion to the debts of said bank contracted subsequent to March 18, 1882.

And the plaintiff, said Harvey Mills, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he has lost by the occasion of the said judgment.

By A. P. GOULD,
ALFRED D. CHANDLER,
*Attorneys for Plaintiff in Error.*

101 (*Bond on Writ of Error.*)

Know all men by these presents that we, Harvey Mills, of Thomaston, in the district of Maine, as principal, and James Henderson and C. Prince, both of said Thomaston, as sureties, are held and firmly bound unto Linus M. Price, a citizen of the State of New Jersey, commorant at Boston, in the State of Massachusetts, receiver of the Pacific National Bank of Boston, in the full and just sum of eight thousand dollars, to be paid to the said Linus M. Price, receiver, his certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a circuit court of the United States, within and for the district of Massachusetts, in a suit depending in said court between the said Linus M. Price, receiver, plaintiff, and the said Harvey Mills, defendant, judgment was rendered against the said defendant, and the said defendant having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said defendant shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

HARVEY MILLS. [L. S.]
JAMES HENDERSON. [L. S.]
C. PRINCE. [L. S.]

Signed, sealed, and delivered in presence of—
J. E. MOORE.

Approved.
LE BARON B. COLT,
*U. S. Circuit Judge.*

A true copy of the bond taken by the judge at the time of allow-

ing the writ of error named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
*Clerk U. S. C. C., Mass. Dist.*

102 The United States of America to Linus M. Price, of Newark, in the State of New Jersey, a citizen of said State, receiver of the Pacific National Bank of Boston, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States within and for the district of Massachusetts, wherein Harvey Mills, of Thomaston, in the State of Maine, and a citizen thereof, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Le Baron B. Colt, circuit judge of the United States for the first judicial circuit, this eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

LE BARON B. COLT,
*U. S. Circuit Judge, First Judicial Circuit.*

Sufficient service of this citation is acknowledged.

A. A. RANNEY,
*For Defendant in Error.*

Endorsed on cover: Massachusetts C. C. U. S. No. 1242. Harvey Mills, plaintiff in error, *vs.* Peter Butler, receiver of the Pacific National Bank of Boston. Filed January 4, 1886.

118-655

Office Supreme Court U. S.
FILED.
OCT 11 1886
JAMES H. McKENNEY,
CLERK.

# Supreme Court of the United States.

**No. 790.**

HARVEY MILLS, *Appellant*, *v.* PETER BUTLER, *Receiver*.

**No. 812.**

HARVEY MILLS, *Plaintiff in Error*, *v.* PETER BUTLER, *Receiver*.

## BRIEF FOR HARVEY MILLS.

### GENERAL STATEMENT OF THE CASE.

For about two years prior to Sept. 13, 1881, the Pacific National Bank of Boston had been doing a general banking business in Boston, Mass., with a capital stock of $500,000.

Equity Record, p. 12.
Law Record, p. 8.

The articles of association of the bank provide that "the capital may be increased, *according to the provisions of Section* 5142 *of the Revised Statutes*, to any sum not exceeding ten hundred thousand dollars."

Equity Record, Exhibit 1, p. 20.
Law Record, Exhibit 1, p. 14.

Sect. 5142 of the Revised Statutes provides that "no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association."

On Sept. 13, 1881, the directors of the Pacific National Bank voted to increase the capital to $1,000,000.

Equity Record, p. 12; Exhibit 3, p. 24.
Law Record, p. 8; Exhibit 3, p. 19.

The following notice was thereupon sent to the stockholders of the bank: —

PACIFIC NATIONAL BANK, 105 Devonshire Street,
BOSTON, Sept. 13, 1881.

At a meeting of the directors of this bank, held this day, it was "*Voted*, That the capital of this bank be increased to $1,000,000, and that stockholders of this date have the right to take the new stock at par in equal amounts to that now held by them." Subscriptions to the new stock will be payable October 1st. Parties desiring to anticipate will be allowed interest to that date, at four per cent per annum.

J. M. PETTENGILL, *Cashier*.

Equity Record, p. 12; Exhibit 4, p. 24.
Law Record, p. 8; Exhibit 4, p. 19.

This notice was received by the appellant and plaintiff in error, Harvey Mills, a master mariner of Thomaston, Me., who held twenty shares of the stock of the bank. He returned the same paper upon which the notice was printed to the bank, with an agreement written upon it to take the number of shares of the increase to $1,000,000, to which he was entitled by the notice. He afterwards bought rights to subscribe for and take ten shares more of such increase, and he subscribed for the same, making thirty shares in all so subscribed for by him. On Sept. 30, 1881, he paid $2,000, and on Oct. 1, 1881, $1,000, in pursuance of his subscription, and received therefor the following receipts: —

PACIFIC NATIONAL BANK,
BOSTON, Sept. 30, 1881.

$2,000.

Received from Harvey Mills two thousand dollars, on account of subscription to new stock.

J. M. PETTENGILL, *Cashier*.

PACIFIC NATIONAL BANK,
BOSTON, Oct. 1, 1881.

$1,000.

Received from Harvey Mills one thousand dollars, on account of subscription to new stock.

J. M. PETTENGILL, *Cashier.*

Equity Record, pp. 81, 82.
Law Record, pp. 59, 60.

In October, 1881, he returned the receipts to the bank and received in their place a certificate for thirty shares of new stock, dated Oct. 1, 1881.

Equity Record, p. 82.
Law Record, p. 60.

On Nov. 18, 1881, the bank became unable to meet its debts and liabilities, failed to redeem its circulating notes, and closed its doors to business.

Equity Record, p. 12.
Law Record, p. 8.

At the time of the failure, Nov. 18, 1881, the whole amount of the increase of capital to $1,000,000, to which Mills had subscribed, had not been taken or paid in, and it never was thereafter taken or paid in, and no notice was ever transmitted to the Comptroller of the Currency that it had been taken or paid in. The Comptroller never issued a certificate stating that the capital stock had been increased to the amount of $1,000,000, as voted Sept. 13, 1881, nor did said Comptroller ever certify his approval of such increase, or that it had been duly paid in as a part of the capital of the bank. No action whatever was at any time taken by the Comptroller respecting an increase of stock to $1,000,000.

Equity Record, p. 12.
Law Record, p. 8.

At the time Mills received his certificate for new stock, in October, 1881, just before the failure of the bank, he did not know nor had he been informed that the $500,000 increase of the capital stock to $1,000,000 which had been voted Sept. 13, 1881, and to

which he had subscribed, had not all been taken and paid in. He understood, when he received his certificate and afterwards, that the capital was $1,000,000.

Equity Record, p. 83.
Law Record, p. 60.

In fact, only $461,300 of the increase of $500,000 was ever taken, all of which $461,300 was paid in on account of subscriptions to the proposed increase to $1,000,000, voted Sept. 13, 1881.

This whole amount of $461,300 was used by the bank in its business, and at the time of the failure, Nov. 18, 1881, *had all been lost.*

Equity Record, pp. 17, 18.
Law Record, pp. 8, 9, 13.

When the bank failed, Nov. 18, 1881, it owed over $3,000,000 in excess of the value of its assets, and was in fact deeply and hopelessly insolvent.

Indeed, as far back as Sept. 13, 1881, when the directors voted to increase the capital to $1,000,000, the entire capital of the bank had been lost, and it was then insolvent. This condition of the bank was misstated to or concealed from the stockholders at the time they were induced to subscribe to the increase to $1,000,000.

Equity Record, pp, 16, 17, 18.
Law Record, pp. 9–13.

On the same day that the bank failed, Nov. 18, 1881, Daniel Needham, a duly appointed examiner of national banks, was placed by the Comptroller of the Currency in exclusive charge and possession of the bank and all its funds, assets, records and books, and he remained in the exclusive charge and possession of the same, acting under the direction of the Comptroller of the Currency, for a period of four months. The directors of the bank in the mean time had no possession or control over its assets, or the money received or paid out on account of the bank, except under the supervision, control and authority of said Needham. During all this time the doors of the bank were closed to business.

Equity Record, p. 13.
Law Record, p. 9.

Soon after the failure of the bank, and before Dec. 13, 1881, the Comptroller of the Currency was informed that the bank was in a most precarious condition and insolvent, owing at least $961,300 more than the value of its assets.

Equity Record, p. 13.
Law Record, pp. 9, 59.

Before Dec. 13, 1881, the Comptroller was also informed of the vote of the directors which had been passed Sept. 13, 1881, to increase the capital of the bank to $1,000,000, and that the full amount of that increase had not been subscribed for when the bank suspended in November. He was also informed that the $461,300, which had been paid in on subscriptions to the increase to $1,000,000, had all been lost.

Equity Record, p. 13.
Law Record, pp. 9, 59.

At a conference held before Dec. 13, 1881, between the Comptroller of the Currency, certain representatives of the directors, and William J. Best, who was a large creditor, the question of what should be considered the capital of the bank was presented to the Comptroller and discussed, and the conclusion was reached that such a vote as that of Dec. 13, 1881, hereinafter set forth, should be passed by the directors, that the Comptroller should then be notified that the capital had been increased to $961,300, and should thereupon issue to the bank his certificate of increase to that amount.

Equity Record, p. 65.
Law Record, p. 59.

In pursuance of such conclusion, on Dec. 13, 1881, when the doors of the bank were closed to business, and when it and all its assets were in the exclusive charge and possession of Daniel Needham, agent and servant of the Comptroller of the Currency, as aforesaid, and acting under his direction, the directors of the bank passed the following vote: —

*Voted*, That whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to $1,000,000, and that stockholders of this date have the

right to take the new stock at par in equal amount to that held by them;

And whereas, the stockholders were duly notified of said vote, and also, that subscriptions to the new stock would be payable October 1st;

And whereas, $461,300 of said new stock has been taken and paid in;

And whereas, $38,700 thereof has not been taken and paid in;

*Voted*, That said $38,700 of said stock be, and is hereby, cancelled, and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

*Voted*, That the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association, according to law.

Equity Record, pp. 13, 14.

Law Record, pp. 9, 10.

On the same day, J. M. Pettengill, cashier of the bank, acting under the directors, and upon the suggestion of the Comptroller, that such a certificate should be sent to him, sent the following certificate, sworn to by said cashier, to the Comptroller of the Currency: —

PACIFIC NATIONAL BANK OF BOSTON,
Dec. 13, 1881.

*To the Comptroller of the Currency, Washington D. C.*

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased pursuant to the articles of association of said bank, in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred and sixty-one thousand three hundred dollars.

[SEAL] J. M. PETTENGILL, *Cashier.*

Equity Record, p. 14.

Law Record, p. 10.

On Dec. 16, 1881, the Comptroller of the Currency, knowing that the bank was insolvent and that its capital of $500,000 was all lost, and knowing further that the $461,300 paid into the bank on account of subscriptions to the increase of stock to $1,000,000, was

all lost, and without in any way consulting Mills and the other subscribers to that increase, and without his or their consent or knowledge, sent to the directors of the bank the following certificate: —

TREASURY DEPARTMENT,
OFEICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, Dec. 16, 1881.

Whereas, satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston, Mass.," has been increased in the sum of $461,300, in accordance with the provisions of its articles of association, and that the whole amount of such increase has been paid in.

Now it is hereby certified that the capital stock of "The Pacific National Bank of Boston, Mass.," aforesaid, has been increased as aforesaid in the sum of $461,300; that said increase of capital has been paid into said bank as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency. In witness whereof, I hereunto affix my official signature.

[SEAL] JOHN J. KNOX, *Comptroller.*

Equity Record, pp. 13, 14.
Law Record, pp. 8, 10.

On the very same day that the Comptroller thus attempted by his certificate to create new stock to the amount of $461,300, attempting thereby to change the position of the subscribers to the $500,000 increase from that of creditors to that of stockholders, with a further certain liability to the amount of $461,300, he sent (apparently by the same mail) to the bank, still in his possession, the following communication: —

WASHINGTON, Dec. 16, 1881.

*The Pacific National Bank of Boston, Massachusetts:*

The entire capital stock of the Pacific National Bank of Boston, Massachusetts, amounting to nine hundred and sixty-one thousand three hundred dollars ($961,300) *having been lost*, notice is hereby given to said bank, under the provisions of Section 5205 of the Revised Statutes of the United States, to pay the deficiency in its capital stock by an assessment of one hundred (100) per cent upon its shareholders *pro rata* for the amount of capital stock held by each, and that if such deficiency shall not be paid, and said bank shall refuse to go into liquidation, as provided by law, for three

months after this notice shall have been received by it, a receiver may be appointed to close up the business of the association according to the provisions of Sect. 5234 of the Revised Statutes of the United States.

In testimony whereof, I have hereto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the city of Washington and District of Columbia, this sixteenth day of December, A. D. 1881.

[SEAL] JOHN JAY KNOX,
*Comptroller of the Currency.*

Equity Record, pp. 14, 15.
Law Record, p. 10.

There was no vote of the stockholders of the bank or of the subscribers to the increase to one million dollars, relating to the increase or reduction of the capital stock of the bank. No opportunity was ever given to the stockholders of the bank to subscribe for shares in an increase of $461,300, in accordance with the requirements of the Articles of Association.

Equity Record, p. 14.
Law Record, p. 10.

The only meeting of the stockholders of the bank held after the annual meeting of Jan. 11, 1881, was the annual meeting held Jan. 10, 1882. The notice of this meeting published in the Boston *Daily Advertiser* was as follows:—

PACIFIC NATIONAL BANK.

The annual meeting of the stockholders of this bank for choice of directors and for any other business that may legally come before them, will be held at their banking rooms, 105 Devonshire Street, on Tuesday, Jan. 10, 1882, at 11 o'clock A. M.

J. M. PETTENGILL, *Cashier.*

Equity Record, p. 15.
Law Record, p. 12.

Mills did not attend this annual meeting, and had no notice of it, except by seeing the foregoing notice published in the Boston *Advertiser*.

Equity Record, p. 83.
Law Record, p. 60.

Shortly after Jan. 10, 1882, he received information of an assessment upon the stockholders of the Pacific National Bank of one hundred per cent upon each share. He thereupon came to Boston with five thousand dollars in money. Before he paid it, he had an interview with Needham, the bank examiner, who was then in possession and charge of the bank, in which Needham told him that he would have to pay the assessment, and that such payment would clear him from all liability for the debts of the bank. He then handed the money to Needham, and after Needham received it, he again told Mills that that would clear him of all liability.

Equity Record, p. 82.
Law Record, p. 60.

At the time of this payment, the bank and all moneys received by it were in the exclusive charge of the Comptroller, acting through Needham, his agent.

Equity Record, p. 82.
Law Record, p. 60.

Mills paid the money to keep from being sued, supposing the assessment could be enforced against him by a suit at law, and he would not have paid it if he had not then understood that no future liability would attach upon his stock for the payment of the debts of the bank. He understood that the money was to go towards the payment of the debts.

Equity Record, p. 82.
Law Record, p. 60.

Mills did not know, at the time he made this payment, that the increase of capital from $500,000 to $1,000,000, which was voted Sept. 13, 1881, and to which he had subscribed in September, 1881, had not all been taken and paid in; but he supposed and he believed that the capital had been validly increased to $1,000,000. It does not appear that he was informed of the action of the directors, or of that of the Comptroller of the Currency, in December, 1881, purporting to fix the capital stock at $961,300, before the appoint

ment of the receiver, nor does it appear that he knew before that time that the $500,000 increase was not all taken and paid in.

Equity Record, p. 83.
Law Record, p. 60.

Mills had no information until the taking of his evidence in these cases as to what appeared on the books or records of the bank respecting his ownership of stock.

Equity Record, p. 84.
Law Record, p. 60.

It does not appear that any register or list of stockholders was ever kept, in accordance with Sect. 5210 of the Revised Statutes; nor does it appear that the stock ledger of the bank, so called, was ever seen by, or its contents made known to, any creditor of the bank or any member of the public.

On March 18, 1882, the amount paid on the assessment of one hundred per cent, including the $5,000 paid by Mills, was $643,000.

This entire sum was paid by the stockholders of the bank and *by some of* the subscribers to the increase voted Sept. 13, 1881, while the bank and all its receipts and assets were in the possession and under the control of Needham, the representative of the Comptroller of the Currency.

Equity Record, pp. 80, 13.
Law Record, pp. 9, 14.

On March 18, 1882, this entire fund of $643,000 was therefore in the hands of and under the control of said Needham.

Equity Record, p. 13.
Law Record, p. 9.

The bank was then deeply and hopelessly insolvent.

Equity Record, pp. 16, 18, 77.
Law Record, pp. 12, 13.

On March 18, 1882, the Comptroller of the Currency, without consulting Mills or the stockholders of the bank, or the subscribers to the increase to $1,000,000, or those who had paid in the $643,000 on account of the assessment, surrendered the bank and its assets to the directors, who opened the bank to business. The directors found, however, that they could do, and did in fact do, very little business in banking.

Equity Record, p. 17.
Law Record, p. 13.

From March 18 to May 20, the indebtedness of the bank was paid off and reduced over $2,000,000.

Equity Record, p. 16.
Law Record, p. 12.

The whole amount paid by the stockholders as a contribution towards the payment of the debts of the bank by voluntary assessment, viz., $742,800, including the $5,000 paid by Mills, was applied to the payment of the debts of the bank.

Equity Record, p. 18.
Law Record, p. 13.

There were new liabilities contracted subsequent to March 18, 1882, to the amount of $200,000, but the bank after that time made no new losses.

Equity Record, pp. 16, 19.
Law Record, pp. 12, 13.

The receiver was appointed May 22, 1882. All the assets which were in the bank Nov. 18, 1881, came into the receiver's hands, when he took possession of the bank, except such as had been collected and applied to the payment of the debts and expenses of the bank, and such as had been surrendered on compromise in the settlement of doubtful assets.

Equity Record, p. 16.
Law Record, p. 12.

On Nov. 27, 1882, six months after the appointment of the receiver, the Comptroller of the Currency made another demand or requisition for $961,300 upon the stockholders of the bank and upon the subscribers to the increase to $1,000,000, being an assessment of one hundred per cent upon what was alleged and is alleged by the receiver to be the capital of the bank. The receiver brought suits to enforce this assessment March 14, 1883.

Equity Record, p. 18.
Law Record, p. 13.

In the suit brought against Mills, the receiver alleges him to be the holder of fifty shares of the stock of the bank, and seeks to enforce against him, as such, a payment of $5,000.

To enjoin the prosecution of the suit so instituted against him, Mills caused to be brought in the Circuit Court for the same district in which the suit itself was pending, the bill in equity, the whole record of which is now before this court upon Mills's appeal. In this bill in equity, Mills prays that the receiver may be enjoined from the further prosecution of said suit against him, and also prays for such other and further relief as to the Court may seem meet.

The claim set forth in the bill in equity, and still urged in this court, as the ground for such equitable relief, is that the contribution by Mills in January, 1882, of an amount equal to the par value of the stock held by him, towards a fund which was actually used in the payment of the debts of the bank, the bank then being insolvent, constituted in equity a satisfaction and extinguishment of his liability as a stockholder for the debts of the bank. It is further set forth in said bill, and still urged as an additional ground for equitable relief, that by the payment of the $3,000 made by Mills upon the thirty shares of alleged new stock, which in fact never had any legal existence, and on which Mills never incurred any liability, he really contributed towards a fund actually used for the payment of the debts of the bank, an amount equal to more than two hundred per cent of the stock held by him.

Mills also defended the suit instituted against him by the receiver, the whole record of which has been brought before this court by writ of error, upon two grounds: —

*First.* That he was not at the time of the appointment of the receiver, or at any time, the holder of fifty shares of the stock of the Pacific National Bank, but was in fact and in law a holder of only twenty shares thereof. Mills's claim is, that the attempt on the part of the directors and the Comptroller of the Currency in December, 1881, to fix the capital stock of the bank at $961,300 was contrary to law and void, that the alleged thirty shares of new stock on which Mills is sued never had any legal existence; and that he, by virtue of his subscription in September, 1881, for thirty shares in the then proposed increase of capital from $500,000 to $1,000,000, and by his other acts, never became liable on account of the debts of the Pacific National Bank beyond his liability as the holder of twenty shares of valid stock.

*Second.* That by his contribution in January, 1882, of an amount equal to the par value of all the stock ever held by him towards a fund which was all used in the payment of the debts of the bank, the bank then being insolvent, he in law discharged his liability as a stockholder in said bank, and should therefore have judgment in his favor in the suit pending against him.

## SPECIFICATIONS OF ERRORS.

In the Equity Appeal, the error in the decree of the Circuit Court, which is here relied upon and urged, is that the Circuit Court ought to have held and adjudged that the contribution by Mills, Jan. 17, 1882, of an amount equal to the par value of his stock in the Pacific National Bank, towards a fund which was all used in the payment of the debts of the bank, the bank then being insolvent, constituted in equity a performance, satisfaction and extinguishment of his liability as such stockholder, and that the Circuit Court ought to have restrained the receiver from further prosecuting the suit instituted by him against said Mills, and that the Circuit Court erred in not so doing.

The Circuit Court further erred in not granting to Mills, in whole or in part, the relief prayed for in his bill of complaint.

As plaintiff in error, Mills relies upon and urges all the errors specified in the Assignment of Errors, which make a part of the

record of the Writ of Error, beginning on p. 67 thereof. These errors are as follows: —

1. The Circuit Court erred in giving judgment for the defendant in error on the facts found by the Court, and in not giving judgment thereon to the plaintiff in error.

2. There was error in each of the rulings of said court, admitting in evidence, each one severally, the records, papers and documents, copies of which are annexed to and a part of "Statement of Facts found by the Court," and which records, papers and documents are, respectively, Exhibits 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 17 in the record of the Writ of Error.

3. There was error in the ruling of said court, admitting in evidence what was assumed to be a record of the doings of a meeting of the stockholders of said Pacific National Bank, held Jan. 10, 1882, a copy of which is annexed to said finding of facts by the court as "Exhibit 9," except so much thereof as is a record of the election of a board of directors of said bank, which is as follows: —

"The following directors were chosen by a stock vote of 4,727 shares against 80 scattering votes: Lewis Coleman, of Boston; John Shepard, of Boston; M. Dyer, Jr., of Boston; M. P. Springer, of Newton; J. H. Whitaker, of Malden; Edwin Ray, of Newton; J. H. Sanborn, of Newton; E. M. Fowle, of Newton; George H. March, of Watertown; Arthur Sewall, of Bath; John E. Cassidy, of Boston; John Fallon, of Lawrence." [The exhibits referred to in the two preceding specifications of error cover forty pages of the record of the Writ of Error, and are not here set out because of their voluminous character.]

4. There was error in the ruling of the said court, admitting in evidence the following vote of the directors of said National Pacific Bank, passed Dec. 13, 1881, to wit: —

*Voted*, That whereas it was voted by this board, on the thirteenth day of September last, that the capital of this bank be increased to one million dollars, and that stockholders of this date have the right to take the new stock at par in equal amount to that held by them;

And whereas the stockholders were duly notified of said vote, and also that subscriptions to the new stock would be payable Oct. 1;

And whereas $461,300 of said new stock has been taken and paid in;

And whereas $38,700 thereof has not been taken and paid in;

*Voted*, That said $38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000, and that the paid-up capital stock of this association amounts to $961,300.

*Voted*, That the Comptroller of the Currency be notified that the capital of this association has been increased in the sum of $461,300, and that the whole amount of said increase has been paid in as part of the capital of this association, and that he be requested to issue his certificate of said increase to this association according to law.

5. There was error in the ruling of said court admitting in evidence the following certificate of J. M. Pettengill, the cashier of said bank, to the Comptroller of the Currency, which is dated Dec. 13, 1881, to wit: —

PACIFIC NATIONAL BANK OF BOSTON,
Dec. 13, 1881.

*To the Comptroller of the Currency, Washington, D. C.*

It is hereby certified that the capital stock of "The Pacific National Bank of Boston" has been increased, pursuant to the Articles of Association of said bank, in the sum of four hundred and sixty-one thousand three hundred dollars, all of which has been paid in, and that the paid-up capital stock of said bank now amounts to nine hundred and sixty-one thousand three hunnred dollars.

[SEAL] J. M. PETTENGILL, *Cashier.*

6. There was error in the ruling of said court, admitting in evidence the following certificate of John J. Knox, Comptroller of the Currency, dated Dec. 16, 1881, to wit: —

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, Dec. 16, 1881.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the capital stock of "The Pacific National Bank of Boston," Mass., has been increased in the sum of four hundred and sixty-one t ousand three hundred dollars, in accordance with the provisions of its Articles of Association, and that the whole amount of such increase has been paid in;

Now, it is hereby certified, that the capital stock of "The Pacific National Bank of Boston," Mass., aforesaid, has been increased as aforesaid, in the sum of four hundred and sixty-one thousand three hundred dollars; that said increase of capital has been paid into said bank, as a part of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature.

[SEAL] JOHN J. KNOX, *Comptroller.*

7. There was error in the ruling of said court, admitting in evidence the facts introduced by the receiver, relating to the suits as brought by three creditors after March 18 and before May 20, 1882, as stated in the facts found by the Court. (Page 13, record of Writ of Error.)

8. There was error in the finding of said court, as a conclusion of law from the facts found by it, that the plaintiff in error was the owner of the number of shares of stock in said Pacific National Bank, on May 20 and on May 22, 1882, as declared in that behalf in the declaration.

9. There was error in the ruling of said court in each and every refusal to make the several and separate rulings requested by the plaintiff in error, in his prayers therefor submitted to the court after the evidence introduced by both parties was closed, to wit: —

(1.) In refusing to rule, as requested, "that by reason of the plaintiff in error's subscription for thirty shares of the $500,000 increase of the capital of the Pacific National Bank, voted Sept. 13, 1881, and his payment thereof, and receipt and retention of a certificate of stock for that amount, he cannot be held as a stockholder in this action unless it appears that the whole amount of the $500,000 increase voted, and to which he subscribed, was, either before or subsequent to his reception of his certificate, taken and paid in, and the increase of stock to that amount approved by the Comptroller of the Currency.

(2.) In refusing to rule as requested, "that the vote of the directors of the Pacific National Bank, Sept. 13, 1881, that the capital of that bank be increased to $1,000,000, and the vote of the directors of said bank, Dec. 13, 1881, in which the attempt was made to limit the increase of the capital to $461,300, and to fix the whole capital at $961,300, and the approval thereof by the Comptroller of the Currency, by his certificate dated Dec. 16, 1881, did not constitute a legal and valid increase of the capital stock of said bank to $961,300."

(3.) In refusing to rule as requested, "that if the action of the directors of said bank, and the Comptroller of the Currency, set forth in the preceding request, constituted a valid increase of the capital stock of said bank of $461,300, and to the amount of

$961,300, the plaintiff in error cannot be held in this action as a stockholder in said increase of $461,300 by reason of his subscription for 30 shares of the increase of $500,000 voted Sept. 13, 1881, and his payment of such subscription and reception of a certificate for said 30 shares thereof prior to the failure of the bank, Nov. 18, 1881."

(4.) In refusing to rule as requested, "that the retention by the plaintiff in error of said certificate for thirty shares of said $500,000 increase until the final closing of the bank, May 20, 1882, and the payment of the assessment of one hundred per cent upon the par value of said supposed shares, which was made by him Jan. 17, 1882, were not sufficient in this case to constitute or hold him as an owner of said shares if he did not know, and had never been informed, of the said action of the directors, Dec. 13, 1881, or of the said action of the Comptroller, Dec. 16, 1881, certifying the stock at $961,300, until after the receiver was appointed, May 22, 1882, and did not, until after that time, know, and had never been informed, that the increase of said capital stock to $1,000,000 voted by the directors Sept. 13, 1881, had not all been taken and paid in."

(5.) In refusing to rule as requested, "that if the votes of the directors of Sept. 13 and Dec. 13, 1881, and the certificate of the Comptroller dated Dec. 16, 1881, did not constitute a valid increase of the capital of the bank to $961,300, that attempted increase was not validated by subsequent ratifying acts (if such acts there were) by part only of those who had subscribed for and paid in the $461,300, under the vote to increase $500,000."

(6.) In refusing to rule, as requested, "that the amount of the capital stock could not be increased by ratification to a sum less than $961,300; and if the plaintiff in error did acts which might constitute ratification on his part, it would not make the thirty shares of proposed new stock, subscribed and paid for by him, legal stock unless all the other subscribers to the amount which had been approved by the Comptroller of the Currency ($461,300) also ratified said increase."

(7.) In refusing to rule, as requested, "that the payment by the plaintiff in error, Jan. 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent, and its capital

stock lost, and was in the possession and under the control of said Needham, of an amount equal to the par value of the stock which he owned, or of which he held certificates, which was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief that it would discharge him from his liability under the statute to contribute towards the payment af the debts of the bank a sum equal to the par value of his stock, constituted a satisfaction and discharge of that liability, and proof of it is a good defence to this action."

(8.) In refusing to rule, as requested, "that the payment by the plaintiff in error, Jan. 17, 1882, to Daniel Needham, examiner of the Pacific National Bank, which was then insolvent, and its capital stock lost, and was in the possession and under the control of said Needham, of an amount equal to the par value of all the stock which he owned, or of which he held certificates, which sum was applied towards the payment of the indebtedness of said bank, if made with the understanding and belief that it would discharge him from his liability under the statute to contribute towards the payment of the debts of the bank a sum equal to the par value of his stock, constituted a satisfaction and discharge of his liability for all debts contracted before such payment."

(9.) In refusing to rule as requested, "that if the plaintiff in error paid to Daniel Needham, the bank examiner, while he was in charge of the bank, a sum of money equal to the par value of all the shares of stock held by him in said bank, which was applied in payment of the debts, contracts and engagements of the bank, it constituted a discharge of his liability under the statute and is a defence to this action."

(10.) In refusing to rule as requested, "that if plaintiff in error paid the assessment upon all the shares held by him, which was voted at the assemblage of stockholders Jan. 10, 1882, to Daniel Needham, while he was in possession and control of the bank and all moneys received for the payment of its debts, such payment constituted a discharge of the plaintiff in error's liability under the statute and is a defence to this action."

(11.) In refusing to rule as requested, "that if the plaintiff in error, since the failure of the bank in November, 1881, has paid one

assessment of an amount equal to the par value of the shares of said stock owned by him, and such payment did not have the effect of restoring the value of his stock to him in any part, but was devoted to the payment of the debts, contracts and engagements of the bank, he is discharged from further liability, under whatever provision of law that assessment may have been made."

(12.) In refusing to rule as requested, that "the effect would be the same of a payment made under the circumstances stated in the foregoing request if the assessment was made voluntarily by the stockholders upon themselves, without reference to any provision of the statute relating to the making af an assessment."

(13.) In refusing to rule as requested, "that if, after he was notified of the assessment referred to in these requests, the plaintiff in error received from Daniel Needham, the examiner, while he was in possession of the Pacific National Bank and all its assets, and while the moneys paid into said bank were paid and received under his supervision and authority, assurances that the payment of that assessment would relieve him from all further liability under the statute to contribute towards the payment of the debts of the bank, and was influenced to pay the assessment by such assurances, and did thereafterwards pay it to said Needham, such payment is a satisfaction of his liability sought to be enforced in this action and is a defence to it."

10. There was error by said court in rendering judgment against the plaintiff in error for an assessment upon all the stock of which he was alleged in the declaration to be owner, because if judgment was authorized for the assessment upon any part of said alleged stock, it was only upon such stock held by the plaintiff in error as was created prior to Sept. 13, 1881.

11. There was error by said court in rendering judgment for any greater part of the assessment made by the Comptroller of the Currency against the plaintiff in error than the plaintiff in error's due proportion to the debts of said bank contracted subsequent to March 18, 1882.

# ARGUMENT.

The appellant relies on two principal propositions: —

*First.* He is not a stockholder of the new stock.

*Second.* He has once paid his full liability.

## I.

We deny that the character of holder of the new stock has attached to the appellant and plaintiff in error.

He contracted to take new stock in a bank whose capital should be a million dollars.

Pages 24, 81.

This agreement imposed no obligation to take shares of a smaller capital.

These engagements are as distinct as engagements to take stock in different banks.

Acceptance of certificates, entries on the books, payment of assessments, neither separately nor combined, clothe him with that character in fact, or estop him from denying it.

This is settled by the statute itself. There is a clear distinction between the system provided in the national banking law for the original formation of a corporation, and that provided for the increase of its capital.

Sections 5133–5141, 5168–5180, provide for the creation of a corporate life which comes into being when the articles of association are signed and filed. Its subsequent action will be binding upon the associates, although irregular. The departure from mere mandatory provisions can only be remedied by proceedings instituted by the government.

But Section 5412 expressly declares: "*No increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained, specifying the amount of such increase*

*capital stock with his approval thereof, and that it has been duly paid in as a part of the capital of such association.*"

The appellant's subscription, payment, taking the certificate and the entry upon the books were mere preparation for or anticipation of the assuming the character of stockholder, when the whole amount should be subscribed, and the approval and certificate of the Comptroller obtained. They conferred no right and imposed no duty upon appellant, except to become a stockholder when the increase became valid, and imposed no obligation upon the bank except to admit him as a stockholder when the proceeding was complete.

If the Comptroller had withheld his approval altogether, surely appellant could not have been held as shareholder, for the single purpose of liability to previous debts and for no other purpose whatever.

> American Tube Works *v.* Boston Machine Co., 139 Mass. 5.
> Reed *v.* Boston Machine Co., 141 Mass. 454.

In the former case all the elements found here exist, with the additional fact that plaintiffs had actually received dividends on the illegal stock. Allen, J., says: "In all the cases which have come under our observation, where one has been held to be a stockholder by estoppel, there has been a legal creation of the capital stock."

There is no distinction in principle between an attempted increase of capital beyond the amount expressly limited in the charter, and an attempted increase, which the law expressly declares shall not be valid until the consent of the public officer who has control of the subject, be obtained.

The consent of the Comptroller takes the place of the legislative consent, which, in either case, would be sufficient to authorize an increase beyond the original limit.

The issue of the increase was, by the express terms of the statute, *ultra vires.*

In Scovill *v.* Thayer, 105 U. S. 143, it is held that in such case an alleged stockholder is not estopped by receiving certificates, attending corporate meetings, or by the fact that the corporation had held itself out as having increased capital, and so obtained increased credit.

The Court say: —

"The increased stock itself was void. It conferred on the holders no rights, and subjected them to no liabilities. If the stock of the first and second issues had been held by one set of holders, and the stock of the third and fourth by another, in a contest between them, the latter would have been excluded from all participation in the management of the company or in its profits. To decide that the holders of stock issued *ultra vires* have the same rights as the holders of authorized stock, is to ignore and override the limitations and prohibitions of the charter. We think it follows that, if the holder of such spurious stock has none of the rights, he can be subjected to none of the liabilities of the holder of genuine stock. His contract to pay for spurious shares is without consideration, and cannot be enforced. The corporation being absolutely without power to increase its stock above a certain limit, the acquiescence of the shareholder can neither give it validity, nor bind him or the corporation."

The acts of the stockholders, until the certificate of the Comptroller, are nothing more than propositions among themselves.

Charleston *v.* People's Nat. Bank, 5 Rich. So. Car. 103.

In all the cases cited on the other side, so far as we have examined them, the Court hold the stock valid, notwithstanding irregularities. If the corporations had been solvent and gone on, the stockholders, under the principle of those decisions, would have established their right to dividends and to vote. Here, it is clear that until after the certificate of the Comptroller, which was itself long after the facts relied on as an estoppel, no such relation to this corporation in respect to its new stock ever existed.

So far as the certificate is concerned, that is a strange estoppel which estops a person from denying that he is the owner of that which does not exist; that he is a stockholder of no stock. The reasoning of Scovill *v.* Thayer is fully applicable here. If there had been a dividend declared after the issue of these certificates and before the Comptroller's certificate, the old stockholders could have prevented the new ones from receiving it. If there had been a meeting, the old stockholders could have prevented the new ones from voting. There is no single privilege of a stockholder which

the holders of the certificates could have claimed after their issue, until the five hundred thousand dollars had been all paid in, and the Comptroller's certificate to the payment of the increase, and his approval thereof obtained.

Upton *v.* Tribilcock, 91 U. S. 45, Sanger *v.* Upton, 91 U. S. 56, Webster *v.* Upton, 91 U. S. 65, Chubb *v.* Upton, 95 U. S. 665, and Pullman *v.* Upton, 96 U. S. 328, deal only with the case of subscriptions obtained by fraud, or stock which the corporation had a right to issue, but issued irregularly, or stock *de facto* in corporations irregularly organized.

Neither party to the transaction understood the payment of the money, the certificates, or the entries, as conferring any rights upon anybody until the whole half million was paid, and the Comptroller's certificate obtained. They were mere acts of preparation or anticipation.

Certainly there must be some limit to an estoppel. The clerk of a bankrupt corporation cannot, by entering a name on the stock book for any number of shares he pleases, render the person named liable for all or any part of its debts. Could the cashier of this bank, by a stroke of his pen, charge any number of the richest men in Boston with shares to the amount of $1,000,000, and thereby render them liable for these debts?

The presumption arising from entry in a stock book does not apply when all the facts are before the court. No case can be conceived where a person, not a stockholder on all other facts, becomes one by putting his name on a book without his authority.

The certificate and entry in stock book must purport to be shares in some specific capital. There can be no such thing as a share, unless there be a unit which is shared. A numerator is without meaning unless there be a denominator. Until there has been a unit of capital duly created, there can be no such thing as an estoppel to deny holding shares therein.

If it were essential to our argument, we should respectfully ask the Court to reconsider the dictum of Mr. Justice Hunt, in Chubb *v.* Upton, 95 U. S. 665, 668, that "it not necessary to sustain the action against a subscriber, that there should have been a subscription for the whole amount named in the articles." If this be true to any

extent, we conceive it can be only true in cases where a corporation has begun business lawfully, might lawfully have limited its increase to the amount actually subscribed without the assent of any other authority, so that the subscriber would become a shareholder in a going concern, and where the circumstances attending the issue of the certificates immediately, show that to have been the intent of the parties. See cases collected in

1 Morawetz, Sect. 142.
Rensselaer Plank Road Co. *v.* Wetsel, 21 Barb. (N. Y.) 56.

But the present case is as if the subscription paper had itself contained the express condition that the bank would not admit the subscriber to the character of stockholder, until the whole amount should be subscribed.

Lexington R. R. *v.* Chandler, 13 Mich. 311.
Troy & Greenfield R. R. *v.* Newton, 8 Gray, 596.
Worcester & Nashua R. R. *v.* Hinds, 8 Cush. 110.
City Hotel *v.* Dickinson, 6 Gray, 586.
Boston & Barre R. R. *v.* Wellington, 113 Mass. 79.
Boston R. R. *v.* Pearson, 128 Mass. 445.

Creditors, in dealing with corporations, are bound to take notice of the limitations of their charters, and, *à fortiori*, of the limitations of the general law.

2 Morawetz, Private Corp., 849.
Scovill *v.* Thayer, 105 U. S. 143, 149.
Pearce *v.* Madison R. R., 21 How. 441, 443.
*In re* County Life Ass. Co., L. R., 5 Ch. App. 288.

The book produced by the receiver is not a stock register. It is a mere debt and credit account with the stockholder, p. 88.

Ins. Co. *v.* Hastings, 2 Allen, 398.

We come then to the action of the directors of Dec. 13, 1881, and the two certificates of the Comptroller, dated Dec. 16, 1881.

Dec. 13, 1881, the bank was wholly insolvent. Its capital was entirely gone, and its liabilities were more than three million dollars

in excess of its capital and assets. It failed to redeem its circulating notes, or to pay debts or depositors in the course of business. Its doors were closed (pp. 12, 13); its officers were excluded from all control of its affairs by the order of the Comptroller (p. 13).

Needham, the bank examiner, although not styled receiver in the order, was in fact executing the functions of receiver, and not of visitor or examiner, so far as his custody and control of the bank were concerned.

Rev. Stat. §§ 5240, 5241.

This was a clear case of insolvency, and these were clear acts of insolvency within the meaning of Sect. 5242. They were due and public notice to every shareholder and creditor that the power of the bank to deal in any manner with its assets, except to preserve them and to redeem bills, was gone. It could make no binding contract; even a seizure and sale of its property on an adversary suit would be void.

National Bank *v.* Colby, 21 Wall. 609.

The purpose to violate the provisions of Sect. 5242 would be inferred as matter of law from any payment or transfer of the property under these circumstances, and notice of such purpose be imputed to both parties.

This is very well stated in Pratt's digest of the National Bank Act in the note to Sect. 5242: "It is plain that a bank is bankrupt at the moment that it cannot pay legitimate demands upon it in current funds; and the very fact that when a demand is made, a bank offers something other than current funds, would appear to be presumptive evidence of insolvency. It is expected, from the very nature of the business, that a bank will always conduct its business so as to be prepared to meet all demands by immediate payment in money. In practice, however, it is often very difficult to determine the exact date of the insolvency, inasmuch as a bank may be really insolvent and yet be able to meet demands to some small extent in current funds; and it may be able, by disposing of its more easily liquidated assets, such as bonds, or the best of its bills receivable, to supply itself with current funds to meet considerable demands.

But while the exact moment of insolvency is extremely difficult to fix theoretically, still practically, in each actual case, there comes a time when the officers are aware they cannot continue business. *Usually, when they come to this conclusion, the institution closes its doors, and this act is the act of insolvency mentioned in the section.*

"It rarely, however, happens that a bank closes its doors, but it subsequently appears, by competent evidence, that for days, weeks, or months prior to the actual closure, the officers must have been aware that there was no hope for the institution, and they are not excusable because they permitted themselves to be led by false hopes, but it is presumed that things appeared to them as they would appear under like circumstances to competent business men. If it can be proved that after the institution was in such condition that competent bankers would have closed its doors, the officers paid out moneys, etc., all such acts would be null and void, and when creditors were paid in other than current funds, say in bills receivable or other unliquidated assets, such creditors would doubtless be considered to have been put on notice, and could be compelled to refund and await *pro rata* distribution."

Such being the case, the directors had no power to pass the vote fixing the capital at $961,300, and that whether the act be treated as an attempted reduction of the capital, which could only be effected by a two-thirds vote of the shareholders (Sect. 5143), or as a new and original attempt to increase.

It is clear they had no authority to reduce the capital: first, because that power only resides in the stockholders (Rev. St., § 5143); second, because the capital had never been lawfully increased to the point from which they were to reduce it.

Yet it seems clear that reduction and not increase was what they attempted by the vote of Dec. 13, 1881. After reciting the vote to increase to a million, and that the subscriptions were payable Oct. 1, and that "$461,300 of said new stock has been taken and paid in," they vote that "$38,700 of said stock be, and is hereby, cancelled and deducted from said capital stock of $1,000,000," etc. This purpose is further made clear by the fact that the transaction was illegal as an original increase, because there was no offer of the new

stock *pro rata* to holders of the old stock as the Articles of Association (Sect. 5, p. 16, and By-Law, Sect. 11, p. 17) require.

But this is of minor importance. The directors were at that date totally incompetent to bind the bank by the contract which the acceptance of a subscription or payment to stock implies.

The acceptance of a subscription and payment to the stock of a bank implies a contract on the part of the corporation to take the money and employ it in the business of banking. It implies a contract to give him a right as stockholder to his equal control and management of a banking business to be thereafter conducted. If it be an increase, it is a contract for a sale to him of a proportionate joint ownership of an existing capital then engaged and thereafter to be engaged in the business of banking. How can an agency make such a contract which could not lawfully pay a creditor other then a bill-holder a debt of twenty-five cents? If into the ordinary contract for the sale of goods on credit there enter the implied condition that the buyer shall keep his credit good till the transaction be complete, does not this condition enter into the authority of directors to hold third persons or bind their own corporations by contracts to continue the business?

On the same thirteenth day of December, 1881, the cashier sent to the Comptroller a certificate that the capital stock had been increased and the increase all paid in. In point of fact, not a dollar had at that time been subscribed or paid in toward any increase voted by the directors on that day. The subscribers to the new $500,000, under the former vote, might each of them have demanded that his money should be returned immediately on the passage of the vote fixing the amount at $461,300. Nothing, certainly, had yet happened which made any subscriber liable as shareholder.

On the same day the Comptroller issued his two certificates, one declaring that the new stock was all paid in, the other declaring that it was all gone, and directing an assessment (pp. 14, 15).

We submit that neither of these certificates had any validity whatever.

The Comptroller is not a judicial officer. He cannot bind any citizen by a decree or judgment. It is true, his certificate is conclusive upon the question whether a bank is duly organized, and

upon the question how much of the stockholders' liability needs to be enforced.

Kennedy *v.* Gibson, 8 Wall. 498.
Bank *v.* Kennedy, 17 Wall. 20.
Casey *v.* Galli, 94 U. S. 673.
Sanger *v.* Upton, 91 U. S. 56.

A person who has become a shareholder in a bank so far submits himself to the Comptroller's authority; and the enforcement of this submission is necessary for the due protection of the public.

But it cannot be claimed that the Comptroller can by his certificate impose upon persons the character of shareholders without their consent. Nor will it be doubted, we presume, that if the Comptroller be about to give such certificate illegally or contrary to the fact, any person who would be aggrieved thereby may have judicial process to restrain him.

United States *v.* Knox, 102 U. S. 422.

If, then, the act of the Comptroller be performed under such circumstances that it is impossible to apply for an injunction in advance, it must be that the facts may be shown in defence, especially in cases where no new rights have attached in consequence of reliance on his action.

The Comptroller could not lawfully certify to an increase of capital made illegally, for the reasons heretofore stated.

Nor could he properly and lawfully certify that the capital "had been increased in accordance with the provisions of the Articles of Association," and that "said increase of capital has been paid into said bank as a part of the capital stock thereof," or lawfully certify his approval of such increase, when the fact was at that moment known to him that the amount was all gone, that it never had been received as capital, but had been applied to the partial reduction of the indebtedness of a bank still insolvent.

The law will not stick at the phrase "has been duly paid in." It is the substance of an increase of capital to which he is authorized to certify. The fact that it is there, not the fact that it was paid

weeks or months ago, is the essential fact which he is to declare. It must be there as an existent, present fund, to which the public may trust in dealing with the bank, on the one hand, and which is to stand between the shareholders and their liability for debts on the other.

The Comptroller erred, therefore, in deeming himself authorized to certify that the capital had been increased.

He also erred in deeming that he had authority to require an assessment on this increase. The case of a capital "impaired by losses or otherwise," contemplated in Section 5205, does not exist where the capital is all gone and the bank is insolvent.

We claim that there is nothing in this case which creates an estoppel. The liability of the alleged shareholders must depend upon the actual facts, and not on any artificial presumptions.

There has been no change, except for their advantage, in the position of the old creditors. The estoppel can at best only be invoked in behalf of the new creditors, some $200,000 in amount, who contracted with the corporation during the brief period of resumption, and after the alleged increase in stock. Their rights, if any they have, can be preserved in the decree, if the Court think fit.

## II.

Our second general proposition is that the liability of all the shareholders has been equitably discharged by the payment of the assessment.

This case is totally distinguishable, in this respect, from Scoville *v.* Thayer, 105 U. S. 141. In that case Thayer had subscribed for certain valid shares in a Kansas corporation, and had paid in a part of their par value. The company afterward undertook to increase its capital beyond the amount authorized by law, and he subscribed and partly paid for certain unauthorized stock. He had an agreement with the company that no further calls should be made upon him, which agreement was void as against an assignee of the company in bankruptcy. The Court held that, on a suit by such assignee to recover the unpaid balance due on his authorized stock, he could not set off the sums paid by him on the invalid stock.

Mr. Thayer's original subscription was, as between him and the representative of the creditors, a promise to contribute to a fund for their use. The money paid by him on the said stock not being applicable to the purpose for which it was intended, was, in the view most favorable for him, money received by the company to his use, constituting him an ordinary creditor to that amount. The Court say that "no call had been made for contribution on the valid stock, to which the amounts paid on the void stock could be said to apply. No call could have been made by the company under its agreement with the stockholders, unless to pay its creditors, and it does not appear that when the payments were made the company had any creditors." The money paid in that case never, so far as appears, benefited a creditor in the slightest degree. It may, so far as appears, have been paid for the purchase of a mine which proved worthless, or for working a mine which proved unprofitable.

See also

Sawyer *v.* Hoag, 17 Wallace, 610.
Sanger *v.* Upton, 91 U. S. 56.
Scammon *v.* Kimball, 92 U. S. 362.
Morgan *v.* Allen, 103 U. S. 498.

But in the case at bar, the money paid under a supposed liability went directly to reduce the volume of debts, as is expressly found by the Court under an assessment made for that sole purpose. The order by the Comptroller, and the voluntary consent by the supposed shareholder, to pay in one hundred per cent on the supposed capital, were an order and consent to pay that amount to the creditors, and actually accomplished that purpose. It was an actual performance of one obligation by parties who mistakenly supposed they were performing another. In form, it was an attempt to make good the capital. In fact, it was simply a reduction of the volume of debt.

The entire deficiency was never paid. Pursuant, therefore, to the notice of the Comptroller of Dec. 16, 1881, the receivership therein stated went on. The question with which we have now to deal is the same as if one shareholder only had brought to the officer his assessment on the full amount of his stock, paid it over to the representative of the government in charge, been assured by him

that it was in full discharge of his liability; and, the sum paid having been actually applied to the payment of debts, been called upon by the receiver to pay again.

We do not rely on the assurances given by Mr. Needham to the stockholders as binding upon the receiver as an engagement. But they establish and interpret the purpose of the payment. They show that a discharge of the statute liability was the intent of the transaction.

The authorities cited below seem to us conclusively to establish the proposition that a statute liability for the debts of a corporation is discharged *pro tanto* by an advancement to the corporation to pay debts, or by a payment of the debt of any single creditor, in cases where the liability is direct to individual creditors. We claim that the principle is applicable where the liability is to a receiver, who is to distribute the fund among all creditors *pro rata*, and a payment has been made to a general fund of which creditors have the benefit, and which cannot lawfully be paid out in any mode which operates as a preference.

It is clear that the giving of the bank to its officers by Needham, and the subsequent payment of debts, were illegal after the acts of bankruptcy already committed, and that the receiver can recover back all sums, if any, paid out by way of preference.

But it also appears that the effect of the brief resumption was largely to benefit creditors, on the whole. They are in the same condition as if the Court had authorized an assignee in bankruptcy to continue business for the benefit of creditors, and his conduct of the business had resulted in investing the assets and diminishing the liabilities.

Assuming, then, that it is established that these alleged shareholders have paid in voluntarily a sum they were not obliged to pay, with intent that it should be applied to increase a fund to discharge the indebtedness of the bank, and that it has been so applied, and the creditors collectively and individually are thereby in better condition than if the method provided by law had been strictly pursued, we submit that on well-established principles of equity such payment will be treated as a discharge of the statute obligation.

This may be treated either as
An equitable performance of the obligation,
An equitable satisfaction,
A substituted performance,
Or an equitable set-off.

It is not important to consider carefully the distinction between them. They all rest upon the general principle, that equity will not permit double benefits where but one benefit is intended, or impose double burdens where but one obligation is due. The money due from these debtors has reached these creditors, and the substance of their obligations has been fully performed.

Terry *v.* Little, 101 U. S. 216, 218.
2 Pomeroy, Eq. Jur. § 579.
Smith, Principles of Eq. p. 461.
1 Pomeroy, Eq. Jur. 859.
Tubbs *v.* Broadwood, 2 Russ. & M. 487.
Lechmere *v.* Carlisle, 3 P. Wms. 227.
Lowden *v.* Lowden, 1 Bro. Ch. 582.
Leach *v.* Leach, 10 Ves. 516.
Wilcox *v.* Wilcox, 2 Vernon, 558.
2 Lead. Cas. in Eq. 833, 4 Am. Ed.
Blandy *v.* Widmore, 1 P. Wms. 323.
Deacon *v.* Smith, 2 Atk. 323.
1 Pom. Eq. 88, 420, 421, 461, 520, 521.
2 Ib. 580.
1 Story, Eq. Jur. 1107.
2 Ib. 1099, 1104.
Smith, Eq. 444.
*Ex parte* Pye, 18 Ves. 140.
Hinchcliffe *v.* Hinchcliffe, 3 Ves. 516.
Thynne *v.* Glengale, 2 H. L. Cas. 131.
2 Redfield, Wills (2d Ed.), 515 *et seq.*, Sec. 10, Sec. XI., p. 525, cases cited in note.
Raleigh *v.* Raleigh, 35 Ill. 512.
Briggs *v.* Penniman, 8 Conn. 390.
Tallmadge *v.* Fishkill Iron Co., 4 Barb. 382.

Jones *v.* Wiltberger, 42 Ga. 578.
Thompson's Liability of Stockholders, 392.
Lee *v.* Lee, 31 Georgia, 26.
1 Story's Eq. 840.
2 Pomeroy, 952.
United States *v.* Knox, 102 U. S. 422, 425.
Hindustan *v.* Alison, L. R. 6, C. P. 54.
Marine Bank *v.* Fulton Bank, 2 Wall. 256.
Scammon *v.* Kimball, 92 U. S. 370.
National Bank *v.* Ins. Co., 104 U. S. 54.
Patterson *v.* Lynde, 106 U. S. 519.
Smith *v.* Hurd, 12 Metc. 371.

No offer to return the certificates or notice to rescind the transaction was necessary. The transaction never took effect. Nothing ever passed to these alleged stockholders as against the corporation. There was nothing to be avoided or rescinded, and the certificates were of no value so as to need to be returned.

Reed *v.* Boston Machine Co., 141 Mass. 454.
Am. Tube Works *v.* Boston Machine Co., 139 Mass. 11.

GEORGE F. HOAR.
BENJAMIN N. JOHNSON.

118-655

# United States Supreme Court.

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No. 790.

HARVEY MILLS IN EQ., *v.* PETER BUTLER, RECEIVER.

No. 821.

SAME, PLAINTIFF IN ERROR, *v.* SAME.

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## Brief of Appellee and Defendant in Error.

The determination of this case depends on the same main state of facts and questions of law as the case of Mr. Delano, the paging being the same. (Law Rec., pp. 8, 12, 13 to 15, 60–2.) The only difference between the two is as to the amount of the new stock held, and in that Mr. Mills had advice and assurances from Daniel Needham, the National Bank examiner, as to the effect of paying the voluntary assessment. (Eq. Rec., pp. 81–87; law rec., 59–61.) The defendant in error refers to the brief in Mr. Delano's case, and adopts it as applicable to these cases also.

A. A. RANNEY.